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To protect the energy security of the United States and decrease America's dependency on foreign oil sources to 50 percent by the year 2011 by enhancing the use of renewable energy resources, conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies; improve environmental quality by reducing emissions of air pollutants and greenhouse gases; mitigate the effect of increases in energy prices on the American consumer, including the poor and the elderly; and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2001

Mr. MURKOWSKI (for himself, Mr. BREAUX, Mr. LOTT, Mr. VOINOVICH, Mr. DOMENICI, Mr. CRAIG, Mr. CAMPBELL, Mr. THOMAS, Mr. SHELBY, Mr. BURNS, Mr. HAGEL, Mr. STEVENS, and Mr. HUTCHINSON) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To protect the energy security of the United States and decrease America's dependency on foreign oil sources to 50 percent by the year 2011 by enhancing the use of renewable energy resources, conserving energy resources, improving energy efficiencies, and increasing domestic energy supplies; improve environmental quality by reducing emissions of air pollutants and greenhouse gases; mitigate the effect of increases in energy prices on the American consumer, including the poor and the elderly; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “National Energy Secu-
5 rity Act of 2001”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds that—

8 (1) increasing dependence on foreign sources of
9 oil causes systemic harm to all sectors of the United
10 States economy, threatens national security, under-
11 mines the ability of Federal, State, and local units
12 of government to provide essential services, and
13 jeopardizes the peace, security, and welfare of the
14 American people;

15 (2) dependence on imports of foreign oil was 46
16 percent in 1992, rose to more than 55 percent by
17 the beginning of 2000, and is estimated by the De-
18 partment of Energy to rise to 65 percent by 2020
19 unless current policies are altered;

20 (3) even with increased energy efficiency, en-
21 ergy use in the United States is expected to increase
22 27 percent by 2020;

23 (4) the United States lacks a comprehensive na-
24 tional energy policy and has taken actions that limit
25 the availability and capability of the domestic energy

1 sources of oil and gas, coal, nuclear and hydro-
2 electric;

3 (5) a comprehensive energy strategy must be
4 developed to combat this trend, decrease the United
5 States dependence on imported oil supplies and
6 strengthen our national energy security;

7 (6) this comprehensive strategy must decrease
8 the United States dependence on foreign oil supplies
9 to not more than 50 percent by the year 2011;

10 (7) this comprehensive energy strategy must be
11 multifaceted and enhance the use of renewable en-
12 ergy resources (including hydroelectric, solar, wind,
13 geothermal and biomass), conserve energy resources
14 (including improving energy efficiencies), and in-
15 crease domestic supplies of conventional energy re-
16 sources (including oil, natural gas, coal, and nu-
17 clear);

18 (8) conservation efforts and alternative fuels
19 alone will not enable America to meet this goal as
20 conventional energy sources supply 96 percent of
21 America's power at this time;

22 (9) immediate actions must also be taken to
23 mitigate the economic effects of recent increases in
24 the price of crude oil, natural gas, and electricity

1 and the related impacts on American consumers, in-
 2 cluding the poor and the elderly.

3 (b) PURPOSES.—The purposes of this Act are to pro-
 4 tect the energy security of the United States by decreasing
 5 America’s dependence on foreign oil sources to not more
 6 than 50 percent by 2010, by enhancing the use of renew-
 7 able energy resources, conserving energy resources (in-
 8 cluding improving energy efficiencies), and increasing do-
 9 mestic energy supplies, improving environmental quality
 10 by reducing emissions of air pollutants and greenhouse
 11 gases, and mitigating the immediate effect of increases in
 12 energy prices on the American consumer, including the
 13 poor and the elderly.

14 **TITLE I—GENERAL PROVISIONS**
 15 **TO PROTECT ENERGY SUP-**
 16 **PLY AND SECURITY**

17 **SEC. 101. CONSULTATION AND REPORT ON FEDERAL AGEN-**
 18 **CY ACTIONS AFFECTING DOMESTIC ENERGY**
 19 **SUPPLY.**

20 Prior to taking or initiating any action that could
 21 have a significant adverse effect on the availability or sup-
 22 ply of domestic energy resources or on the domestic capa-
 23 bility to distribute or transport such resources, the head
 24 of a Federal agency proposing or participating in such ac-
 25 tion shall notify the Secretary of Energy in writing of the

1 nature and scope of the action, the need for such action,
2 the potential effect of such action on energy resource sup-
3 plies, price, distribution, and transportation, and any al-
4 ternatives to such action or options to mitigate the effects
5 and shall provide the Secretary of Energy with adequate
6 time to review the proposed action and make recommenda-
7 tions to avoid or minimize the adverse effect of the pro-
8 posed action. The proposing agency shall consider any
9 such recommendations made by the Secretary of Energy.
10 The Secretary of Energy shall provide an annual report
11 to the Committee on Energy and Natural Resources of
12 the United States Senate and to the appropriate commit-
13 tees of the House of Representatives on all actions brought
14 to his attention, what mitigation or alternatives, if any,
15 were implemented, and what the short-term, mid-term,
16 and long-term effect of the final action will likely be on
17 domestic energy resource supplies and their development,
18 distribution, or transmission.

19 **SEC. 102. ANNUAL REPORT ON UNITED STATES ENERGY**
20 **INDEPENDENCE.**

21 (a) REPORT.—Beginning on October 1, 2001, and
22 annually thereafter, the Secretary of Energy, in consulta-
23 tion with the Secretary of Defense and the heads of other
24 relevant Federal agencies, shall submit a report to the
25 President and the Congress which evaluates the progress

1 the United States has made toward obtaining the goal of
2 not more than 50 percent dependence on foreign oil
3 sources by 2010.

4 (b) ALTERNATIVES.—The report shall specify what
5 specific legislative or administrative actions that must be
6 implemented to meet this goal and set forth a range of
7 options and alternatives with a benefit/cost analysis for
8 each option or alternative together with an estimate of the
9 contribution each option or alternative could make to re-
10 duce foreign oil imports. The Secretary shall solicit infor-
11 mation from the public and request information from the
12 Energy Information Agency and other agencies to develop
13 the report. The report shall indicate, in detail, options and
14 alternatives to—

15 (1) increase the use of renewable domestic en-
16 ergy sources, including conventional and non-conven-
17 tional sources such as, but not limited to, increased
18 hydroelectric generation at existing Federal facili-
19 ties;

20 (2) conserve energy resources, including improv-
21 ing efficiencies and decreasing consumption; and

22 (3) increase domestic production and use of oil,
23 natural gas, nuclear, and coal, including any actions
24 necessary to provide access to, and transportation
25 of, these energy resources.

1 (c) REFINERY CAPACITY.—As part of the reports
 2 submitted in 2001, 2005, and 2008, the Secretary shall
 3 examine and report on the condition of the domestic refin-
 4 ery industry and the extent of domestic storage capacity
 5 for various categories of petroleum products and make
 6 such recommendations as he believes will enhance domes-
 7 tic capabilities to respond to short-term shortages of var-
 8 ious fuels due to climate or supply interruptions and en-
 9 sure long-term supplies on a reliable and affordable basis.

10 (d) NOTIFICATION TO CONGRESS.—Whenever the
 11 Secretary determines that stocks of petroleum products
 12 have declined or are anticipated to decline to levels that
 13 would jeopardize national security or threaten supply
 14 shortages or price increases on a national or regional
 15 basis, he shall immediately notify the Congress of the situ-
 16 ation and shall make such recommendations for adminis-
 17 trative or legislative action as he believes are necessary
 18 to alleviate the situation.

19 **SEC. 103. STRATEGIC PETROLEUM RESERVE STUDY AND**
 20 **REPORT.**

21 The President shall immediately establish an Inter-
 22 agency Panel on the Strategic Petroleum Study (referred
 23 to as the “Panel” in this section) to study oil markets
 24 and estimate the extent and frequency of fluctuations in
 25 the supply and price of, and demand for crude oil in the

1 future and determine appropriate capacity of and uses for
 2 the Strategic Petroleum Reserve. The Panel may rec-
 3 ommend changes in existing authorities to strengthen the
 4 ability of the Strategic Petroleum Reserve to respond to
 5 energy requirements. The Panel shall complete its study
 6 and submit a report containing its findings and any rec-
 7 ommendations to the President and the Congress within
 8 six months from the date of enactment of this Act.

9 **SEC. 104. STUDY OF EXISTING RIGHTS-OF-WAY TO DETER-**
 10 **MINE CAPABILITY TO SUPPORT NEW PIPE-**
 11 **LINES OR OTHER TRANSMISSION FACILITIES.**

12 Within one year from the date of enactment of this
 13 Act, the head of each Federal agency that has authorized
 14 a right-of-way across Federal lands for transportation of
 15 energy supplies or transmission of electricity shall review
 16 each such right-of-way and submit a report to the Sec-
 17 retary of Energy and the Chairman of the Federal Energy
 18 Regulatory Commission whether the right-of-way can be
 19 used to support new or additional capacity and what modi-
 20 fications or other changes, if any, would be necessary to
 21 accommodate such additional capacity. In performing the
 22 review, the head of each agency shall consult with agencies
 23 of State or local units of government as appropriate and
 24 consider whether safety or other concerns related to cur-
 25 rent uses might preclude the availability of a right-of-way

1 for additional or new transportation or transmission facili-
2 ties and shall set forth those considerations in the report.

3 **SEC. 105. USE OF FEDERAL FACILITIES.**

4 (a) The Secretary of the Interior and the Secretary
5 of the Army shall each inventory all dams, impoundments,
6 and other facilities under their jurisdiction.

7 (b) Based on this inventory and other information,
8 the Secretary of the Interior and the Secretary of the
9 Army shall each submit a report to the Congress within
10 six months from the date of enactment of this Act. Each
11 report shall:

12 (1) Describe, in detail, each facility that is ca-
13 pable, with or without modification, of producing ad-
14 ditional hydroelectric power. For each such facility,
15 the report shall state the full potential for the facil-
16 ity to generate hydroelectric power, whether the fa-
17 cility is currently generating hydroelectric power,
18 and the costs to install, upgrade, modify, or take
19 other actions to increase the hydroelectric generating
20 capability of the facility. For each facility that cur-
21 rently has hydroelectric generating equipment, the
22 report shall indicate the condition of such equip-
23 ment, maintenance requirements, and schedule for
24 any improvements as well as the purposes for which
25 power is generated.

1 (2) Describe what actions are planned or under-
2 way to increase hydroelectric production from facili-
3 ties under his jurisdiction and shall include any rec-
4 ommendations the Secretary deems advisable to in-
5 crease such production, reduce costs, and improve
6 efficiency at Federal facilities, including, but not
7 limited to, use of lease of power privilege and con-
8 tracting with non-federal entities for operation and
9 maintenance.

10 **SEC. 106. NUCLEAR GENERATION STUDY.**

11 The Chairman of the Nuclear Regulatory Commis-
12 sion shall submit a report to the Congress within six
13 months from the date of enactment of this Act on the state
14 of nuclear power generation and production in the United
15 States and the potential for increasing nuclear generating
16 capacity and production as part of this Nation's energy
17 mix. The report shall include an assessment of agency
18 readiness to license new advanced reactor designs and dis-
19 cuss the needed confirmatory and anticipatory research
20 activities that would support such a state of readiness.
21 The report shall also review the status of the relicensing
22 process for civilian nuclear power plants, including current
23 and anticipated applications, and recommendations for im-
24 provements in the process, including, but not limited to

1 recommendations for expediting the process and ensuring
2 that relicensing is accomplished in a timely manner.

3 **SEC. 107. DEVELOPMENT OF A NATIONAL SPENT NUCLEAR**
4 **FUEL STRATEGY AND ESTABLISHMENT OF AN**
5 **OFFICE OF SPENT NUCLEAR FUEL RE-**
6 **SEARCH.**

7 (a) Prior to the Federal Government taking any irre-
8 versible action relating to the disposal of spent nuclear
9 fuel, Congress must determine whether the spent fuel
10 should be treated as waste subject to permanent burial
11 or should be considered an energy resource that is needed
12 to meet future energy requirements.

13 (b) OFFICE OF SPENT NUCLEAR FUEL RESEARCH.—
14 There is hereby established an Office of Spent Nuclear
15 Fuel Research (referred to as the “Office” in this section)
16 within the Office of Nuclear Energy Science and Tech-
17 nology of the Department of Energy. The Office shall be
18 headed by the Associate Director, who shall be a member
19 of the Senior Executive Service appointed by the Director
20 of the Office of Nuclear Energy Science and Technology,
21 and compensated at a rate determined by applicable law.

22 (c) ASSOCIATE DIRECTOR.—The Associate Director
23 of the Office of Spent Nuclear Fuel Research shall be re-
24 sponsible for carrying out an integrated research, develop-
25 ment, and demonstration program on technologies for

1 treatment, recycling, and disposal of high-level nuclear ra-
2 dioactive waste and spent nuclear fuel, subject to the gen-
3 eral supervision of the Secretary. The Associate Director
4 of the Office shall report to the Director of the Office of
5 Nuclear Energy Science and Technology. The first such
6 Associate Director shall be appointed within 90 days of
7 the enactment of this Act.

8 (d) GRANT AND CONTRACT AUTHORITY.—In car-
9 rying out his responsibilities under this section, the Sec-
10 retary may make grants, or enter into contracts, for the
11 purposes of the research projects and activities described
12 in (e)(2).

13 (e) DUTIES.—(1) The Associate Director of the Of-
14 fice shall involve national laboratories, universities, the
15 commercial nuclear industry, and other organizations to
16 investigate technologies for the treatment, recycling, and
17 disposal of spent nuclear fuel and high-level radioactive
18 waste.

19 (2) The Associate Director of the Office shall—

20 (A) develop a research plan to provide rec-
21 ommendations by 2015;

22 (B) identify technologies for the treatment, re-
23 cycling, disposal of spent nuclear fuel and high-level
24 radioactive waste;

1 (C) conduct research and development activities
2 on such technologies;

3 (D) ensure that all activities include as key ob-
4 jectives minimization of proliferation concerns and
5 risk to health of the general public or site workers,
6 as well as development of cost-effective technologies;

7 (E) require research on both reactor- and accel-
8 erator-based transmutation systems;

9 (F) require research on advanced processing
10 and separations;

11 (G) encourage that research efforts include par-
12 ticipation of international collaborators;

13 (H) be authorized to fund international collabo-
14 rators when they bring unique capabilities not avail-
15 able in the United States and their host country is
16 unable to provide for their support;

17 (I) ensure that research efforts with the Office
18 are coordinated with research on advanced fuel cy-
19 cles and reactors conducted within the Office of Nu-
20 clear Energy Science and Technology.

21 (f) REPORT.—The Associate Director of the Office
22 of Spent Nuclear Fuel Research shall annually prepare
23 and submit a report to the Congress on the activities and
24 expenditures of the Office, including the progress that has
25 been made to achieve the objectives of subsection (c).

1 **SEC. 108. STUDY AND REPORT ON STATUS OF DOMESTIC**
2 **REFINING INDUSTRY AND PRODUCT DIS-**
3 **TRIBUTION SYSTEM.**

4 (a) ANNUAL REPORT.—The Secretary of Energy, in
5 consultation with the Administrator of the Environment
6 Protection Agency, the States, the National Petroleum
7 Council, and other representatives of the petroleum refin-
8 ing, distribution and retailing industries, shall submit a
9 report to the Congress on the condition of the domestic
10 petroleum refining industry and the petroleum product
11 distribution system. The first such report shall be sub-
12 mitted no later than January 1, 2002, and revised annu-
13 ally thereafter.

14 (b) RECOMMENDATIONS.—Each annual report shall
15 include any recommendations that the Secretary believes
16 should be implemented either through legislation or regu-
17 lation to ensure that there is adequate domestic refining
18 capacity and motor fuel supplies to meet the economic,
19 social, and security requirements of the United States.

20 (c) PREPARATION.—In preparing each annual report,
21 the Secretary shall—

22 (1) provide an assessment of the condition of
23 the domestic petroleum refining industry and the
24 Nation's motor fuel distribution system, including
25 the ability to make future capital investments nec-
26 essary to manufacture, transport, and store different

1 petroleum products required by local, State, and
2 Federal statute and regulations;

3 (2) examine the reliability and cost of feed-
4 stocks and energy supplied to the refining industry
5 as well as the reliability and cost of products manu-
6 factured by such industry;

7 (3) provide an assessment of the collective ef-
8 fect of current and future motor fuel requirements
9 on—

10 (A) the ability of the domestic motor fuels
11 refining, distribution, and retailing industries to
12 reliably and cost-effectively supply fuel to the
13 Nation’s consumers and businesses;

14 (B) gasoline (reformulated and conven-
15 tional) and diesel fuel (on-highway and off-high-
16 way) supplies;

17 (C) retail motor fuel price volatility;

18 (4) explore opportunities to streamline permit-
19 ting and siting decisions and approvals for expand-
20 ing existing and/or building new domestic refining
21 capacity;

22 (5) recommend actions that can be taken to re-
23 duce future motor supply concerns, and

24 (6) provide an assessment of whether uniform,
25 regional, or national performance-based fuel speci-

1 fications would reduce supply disruptions and price
2 spikes.

3 (d) CONFIDENTIALITY OF DATA.—Any information
4 requested by the Secretary to be submitted by industry
5 for purposes of this section shall be treated as confidential
6 and shall be used only for the preparation of the annual
7 report.

8 **SEC. 109. REVIEW OF FEDERAL ENERGY REGULATORY**
9 **COMMISSION NATURAL GAS PIPELINE CER-**
10 **TIFICATION PROCEDURES.**

11 The Federal Energy Regulatory Commission shall, in
12 consultation with other appropriate Federal agencies, im-
13 mediately undertake a comprehensive review of policies,
14 procedures, and regulations for the certification of natural
15 gas pipelines to determine how to reduce the cost and time
16 of obtaining a certificate. The Commission shall report its
17 findings within 6 months of the date of the enactment of
18 this Act to the Senate Committee on Energy and Natural
19 Resources and the appropriate committees of the United
20 States House of Representatives, including any rec-
21 ommendations for legislative changes.

1 **SEC. 110. ANNUAL REPORT ON AVAILABILITY OF DOMESTIC**
2 **ENERGY RESOURCES TO MAINTAIN THE**
3 **UNITED STATES ELECTRICITY GRID.**

4 (a) Beginning on October 1, 2001, and annually
5 thereafter, the Secretary of Energy, in consultation with
6 the Federal Energy Regulatory Commission and the
7 North American Electric Reliability Council, States, and
8 appropriate regional organizations, shall submit a report
9 to the President and the Congress which evaluates the
10 availability and capacity of domestic sources of energy
11 generation to maintain the electricity grid in the United
12 States. Specifically, the Secretary shall evaluate each re-
13 gion of the country with regard to grid stability during
14 peak periods, such as summer, and options for improving
15 grid stability.

16 (b) The report shall specify specific legislative or ad-
17 ministrative actions that could be implemented to improve
18 baseload generation and set forth a range of options and
19 alternatives with a benefit/cost analysis for each option or
20 alternative together with an estimate of the contribution
21 each option or alternative could make to reduce foreign
22 oil imports. The report shall indicate, in detail, options
23 and alternatives to—

24 (1) increase the use of non-emitting domestic
25 energy sources, including conventional and non-con-

1 ventional sources such as, but not limited to, in-
2 creased nuclear energy generation; and

3 (2) conserve energy resources, including improv-
4 ing efficiencies and decreasing fuel consumption.

5 **SEC. 111. STUDY OF FINANCING FOR NEW TECHNOLOGIES.**

6 (a) The Secretary of Energy shall undertake an inde-
7 pendent assessment of innovative financing techniques to
8 encourage and enable construction of new electricity sup-
9 ply technologies with high initial capital costs that might
10 not be otherwise built in a deregulated market.

11 (b) The assessment shall be conducted by a firm with
12 proven expertise in financing large capital projects or in
13 financial services consulting, and is to be provided to the
14 Congress no later than nine months from the date of en-
15 actment of this Act.

16 (c) The assessment shall include a comprehensive ex-
17 amination of all available techniques to safeguard private
18 investors in high capital cost technologies—including ad-
19 vanced design power plants including, but not limited to,
20 nuclear—against government-imposed risks that are be-
21 yond the investors' control. Such techniques may include
22 (but need not be limited to) Federal loan guarantees, Fed-
23 eral price guarantees, special tax considerations, and di-
24 rect Federal Government investment.

1 **SEC. 112. REVIEW OF REGULATIONS TO ELIMINATE BAR-**
2 **RIERS TO EMERGING ENERGY TECHNOLOGY.**

3 (a) IN GENERAL.—Each Federal agency shall carry
4 out a review of its regulations and standards to determine
5 those that act as a barrier to market entry for emerging
6 energy-efficient technologies, including, but not limited to,
7 fuel cells, combined heat and power, and distributed gen-
8 eration (including small-scale renewable energy).

9 (b) REPORT TO CONGRESS.—No later than eighteen
10 months from date of enactment of this section, each agen-
11 cy shall provide a report to Congress and the President
12 detailing all regulatory barriers to emerging energy-effi-
13 cient technologies, along with actions the agency intends
14 to take, or has taken, to remove such barriers.

15 (c) PERIODIC REVIEW.—Each agency shall subse-
16 quently review its regulations and standards in this man-
17 ner no less frequently than every five years, and report
18 their findings to Congress and the President. Such reviews
19 shall include a detailed analysis of all agency actions taken
20 to remove existing barriers to emerging energy tech-
21 nologies.

22 **SEC. 113. INTERAGENCY AGREEMENT ON ENVIRONMENTAL**
23 **REVIEW OF INTERSTATE NATURAL GAS PIPE-**
24 **LINE PROJECTS.**

25 The Secretary of Energy, in coordination with the
26 Federal Energy Regulatory Commission, shall establish an

1 administrative interagency task force to develop an inter-
 2 agency agreement to expedite and facilitate the environ-
 3 mental review and permitting of interstate natural gas
 4 pipeline projects. The task force shall include the Bureau
 5 of Land Management and the Fish and Wildlife Service
 6 in the Department of the Interior, the United States Army
 7 Corps of Engineers, the United States Forest Service, the
 8 Environmental Protection Agency, the Advisory Council
 9 on Historic Preservation and such other agencies as the
 10 Office and the Federal Energy Regulatory Commission
 11 deem appropriate. The interagency agreement shall re-
 12 quire that agencies complete their review of interstate
 13 pipeline projects within a specific period of time after re-
 14 ferral of the matter by the Federal Energy Regulatory
 15 Commission. The agreement shall be completed within six
 16 months after the effective date of this section.

17 **SEC. 114. PIPELINE INTEGRITY, SAFETY AND RELIABILITY**
 18 **RESEARCH AND DEVELOPMENT.**

19 (a) IN GENERAL.—The Secretary of Transportation,
 20 in coordination with the Secretary of Energy, shall develop
 21 and implement an accelerated cooperative program of re-
 22 search and development to ensure the integrity of natural
 23 gas and hazardous liquid pipelines. This research and de-
 24 velopment program shall include materials inspection tech-

1 niques, risk assessment methodology, and information sys-
2 tems surety.

3 (b) PURPOSE.—The purpose of the cooperative re-
4 search program shall be to promote research and develop-
5 ment to—

6 (1) ensure long-term safety, reliability and serv-
7 ice life for existing pipelines;

8 (2) expand capabilities of internal inspection
9 devices to identify and accurately measure defects
10 and anomalies;

11 (3) develop inspection techniques for pipelines
12 that cannot accommodate the internal inspection de-
13 vices available on the date of enactment;

14 (4) develop innovative techniques to measure
15 the structural integrity of pipelines to prevent pipe-
16 line failures;

17 (5) develop improved materials and coatings for
18 use in pipelines;

19 (6) improve the capability, reliability, and prac-
20 ticality of external leak detection devices;

21 (7) identify underground environments that
22 might lead to shortened service life;

23 (8) enhance safety in pipeline siting and land
24 use;

1 (9) minimize the environmental impact of pipe-
2 lines;

3 (10) demonstrate technologies that improve
4 pipeline safety, reliability, and integrity;

5 (11) provide risk assessment tools for opti-
6 mizing risk mitigation strategies; and

7 (12) provide highly secure information systems
8 for controlling the operation of pipelines.

9 (c) AREAS.—In carrying out this section, the Sec-
10 retary of Transportation, in coordination with the Sec-
11 retary of Energy, shall consider research and development
12 on natural gas, crude oil, and petroleum product pipelines
13 for—

14 (1) early crack, defect, and damage detection,
15 including real-time damage monitoring;

16 (2) automated internal pipeline inspection sen-
17 sor systems;

18 (3) land use guidance and set back manage-
19 ment along pipeline rights-of-way for communities;

20 (4) internal corrosion control;

21 (5) corrosion-resistant coatings;

22 (6) improved cathodic protection;

23 (7) inspection techniques where internal inspec-
24 tion is not feasible, including measurement of struc-
25 tural integrity;

1 (8) external leak detection, including portable
 2 real-time video imaging technology, and the advance-
 3 ment of computerized control center leak detection
 4 systems utilizing real-time remote field data input;

5 (9) longer life, high strength, non-corrosive
 6 pipeline materials;

7 (10) assessing the remaining strength of exist-
 8 ing pipes;

9 (11) risk and reliability analysis models, to be
 10 used to identify safety improvements that could be
 11 realized in the near term resulting from analysis of
 12 data obtained from a pipeline performance tracking
 13 initiative;

14 (12) identification, monitoring, and prevention
 15 of outside force damage, including satellite surveil-
 16 lance; and

17 (13) any other areas necessary to ensuring the
 18 public safety and protecting the environment.

19 (d) RESEARCH AND DEVELOPMENT PROGRAM
 20 PLAN.—Within 240 days after the date of enactment of
 21 this section, the Secretary of Transportation, in coordina-
 22 tion with the Secretary of Energy and the Pipeline Integ-
 23 rity Technical Advisory Committee, shall prepare and sub-
 24 mit to the Congress a five-year program plan to guide ac-
 25 tivities under this section. In preparing the program plan,

1 the Secretary shall consult with appropriate representa-
2 tives of the natural gas, crude oil, and petroleum product
3 pipeline industries to select and prioritize appropriate
4 project proposals. The Secretary may also seek the advice
5 of utilities, manufacturers, institutions of higher learning,
6 Federal agencies, the pipeline research institutions, na-
7 tional laboratories, State pipeline safety officials, environ-
8 mental organizations, pipeline safety advocates, and pro-
9 fessional and technical societies.

10 (e) IMPLEMENTATION.—The Secretary of Transpor-
11 tation shall have primary responsibility for ensuring the
12 five-year plan provided for in subsection (d) is imple-
13 mented as intended by this section. In carrying out the
14 research, development, and demonstration activities under
15 this section, the Secretary of Transportation and the Sec-
16 retary of Energy may use, to the extent authorized under
17 applicable provisions of law, contracts, cooperative agree-
18 ments, cooperative research and development agreements
19 under the Stevenson-Wydler Technology Innovation Act of
20 1980 (15 U.S.C. 3701 et seq.), grants, joint ventures,
21 other transactions, and any other form of agreement avail-
22 able to the Secretary consistent with the recommendations
23 of the Advisory Committee.

24 (f) REPORTS TO CONGRESS.—The Secretary of
25 Transportation shall report to the Congress annually as

1 to the status and results to date of the implementation
2 of the research and development program plan. The report
3 shall include the activities of the Departments of Trans-
4 portation and Energy, the natural laboratories, univer-
5 sities, and any other research organizations, including in-
6 dustry research organizations.

7 (g) PIPELINE INTEGRITY TECHNICAL ADVISORY
8 COMMITTEE.—

9 (1) ESTABLISHMENT.—The Secretary of Trans-
10 portation shall enter into appropriate arrangements
11 with the National Academy of Sciences to establish
12 and manage the Pipeline Integrity Technical Advi-
13 sory Committee for the purpose of advising the Sec-
14 retary of Transportation and the Secretary of En-
15 ergy on the development and implementation of the
16 five-year research, development, and demonstration
17 program plan as defined in Sec. 3(e). The Advisory
18 Committee shall have an ongoing role in evaluating
19 the progress and results of the research, develop-
20 ment, and demonstration carried out under this sec-
21 tion.

22 (2) MEMBERSHIP.—The National Academy of
23 Sciences shall appoint the members of the Pipeline
24 Integrity Technical Advisory Committee after con-
25 sultation with the Secretary of Transportation and

1 the Secretary of Energy. Members appointed to the
2 Advisory Committee should have the necessary quali-
3 fications to provide technical contributions to the
4 purposes of the Advisory Committee.

5 (h) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated to the Secretary of
7 Transportation and to the Secretary of Energy for car-
8 rying out this section such sums as may be necessary for
9 each of the fiscal years 2002 through 2006.

10 **SEC. 115. RESEARCH AND DEVELOPMENT FOR NEW NAT-**
11 **URAL GAS TECHNOLOGIES.**

12 (a) The Secretary of Energy shall conduct a com-
13 prehensive five-year program for research, development
14 and demonstration to improve the reliability, efficiency,
15 safety and integrity of the natural gas transportation and
16 distribution infrastructure and for distributed energy re-
17 sources (including microturbines, fuel cells, advanced en-
18 gine-generators gas turbines reciprocating engines, hybrid
19 power generation systems, and all ancillary equipment for
20 dispatch, control and maintenance).

21 (b) There are authorized to be appropriated such
22 sums as may be necessary for the purposes of this section.

1 **TITLE II—TECHNOLOGY RE-**
2 **SEARCH AND DEVELOPMENT**
3 **PROGRAM FOR ADVANCED**
4 **CLEAN COAL TECHNOLOGY**
5 **FOR COAL-BASED ELEC-**
6 **TRICITY GENERATING FACILI-**
7 **TIES**

8 **SEC. 201. PURPOSE.**

9 The purpose of this title is to direct the Secretary
10 of Energy (referred to as “Secretary” in this title) to—

11 (1) establish a coal-based technology develop-
12 ment program designed to achieve cost and perform-
13 ance goals;

14 (2) carry out a study to identify technologies
15 that may be capable of achieving, either individually
16 or in combination, the cost and performance goals
17 and for other purposes; and

18 (3) implement a research, development, and
19 demonstration program to develop and demonstrate,
20 in commercial-scale applications, advanced clean coal
21 technologies for coal-fired generating units con-
22 structed before the date of enactment of this title.

23 **SEC. 202. COST AND PERFORMANCE GOALS.**

24 (a) IN GENERAL.—The Secretary shall perform an
25 assessment that identifies costs and associated perform-

1 ance of technologies that would permit the continued cost-
 2 competitive use of coal for electricity generation, as chem-
 3 ical feedstocks, and as transportation fuel in 2007, 2015,
 4 and the years after 2020.

5 (b) CONSULTATION.—In establishing cost and per-
 6 formance goals, the Secretary shall consult with represent-
 7 atives of—

- 8 (1) the United States coal industry;
- 9 (2) State coal development agencies;
- 10 (3) the electric utility industry;
- 11 (4) railroads and other transportation indus-
 12 tries;
- 13 (5) manufacturers of equipment using advanced
 14 coal technologies;
- 15 (6) organizations representing workers; and
- 16 (7) organizations formed to—
 - 17 (A) further the goals of environmental pro-
 18 tection;
 - 19 (B) promote the use of coal; or
 - 20 (C) promote the development and use of
 21 advanced coal technologies.

22 (c) TIMING.—The Secretary shall—

- 23 (1) not later than 120 days after the date of
 24 enactment of this Act, issue a set of draft cost and
 25 performance goals for public comment; and

1 (2) not later than 180 days after the date of
2 enactment of this Act, and after taking into consid-
3 eration any public comments received, submit to
4 Congress the final cost and performance goals.

5 **SEC. 203. STUDY.**

6 (a) IN GENERAL.—Not later than 1 year after the
7 date of enactment of this Act, the Secretary, in coopera-
8 tion with the Secretary of the Interior and the Adminis-
9 trator of the Environmental Protection Agency, shall con-
10 duct a study to—

11 (1) identify technologies capable of achieving
12 cost and performance goals, either individually or in
13 various combinations;

14 (2) assess costs that would be incurred by, and
15 the period of time that would be required for, the
16 development and demonstration of technologies that
17 contribute, either individually or in various combina-
18 tions, to the achievement of cost and performance
19 goals; and

20 (3) develop recommendations for technology de-
21 velopment programs, which the Department of En-
22 ergy could carry out in cooperation with industry, to
23 develop and demonstrate such technologies.

24 (b) COOPERATION.—In carrying out this section, the
25 Secretary shall give appropriate consideration to the ex-

1 pert advice of representatives from the entities described
2 in section 111(b).

3 **SEC. 204. TECHNOLOGY RESEARCH AND DEVELOPMENT**
4 **PROGRAM.**

5 (a) IN GENERAL.—The Secretary shall carry out a
6 program of research on and development, demonstration,
7 and commercial application of coal-based technologies
8 under—

9 (1) this Act;

10 (2) the Federal Nonnuclear Energy Research
11 and Development Act of 1974 (42 U.S.C. 5901 et
12 seq.);

13 (3) the Energy Reorganization Act of 1974 (42
14 U.S.C. 5801 et seq.); and

15 (4) title XVI of the Energy Policy Act of 1992
16 (42 U.S.C. 13381 et seq.).

17 (b) CONDITIONS.—The research, development, dem-
18 onstration, and commercial application programs identi-
19 fied in section 203(a) shall be designed to achieve the cost
20 and performance goals, either individually or in various
21 combinations.

22 (c) REPORT.—Not later than 18 months after the
23 date of enactment of this Act, the Secretary shall submit
24 to the President and Congress a report containing—

1 (1) a description of the programs that, as of the
 2 date of the report, are in effect or are to be carried
 3 out by the Department of Energy to support tech-
 4 nologies that are designed to achieve the cost and
 5 performance goals; and

6 (2) recommendations for additional authorities
 7 required to achieve the cost and performance goals.

8 **SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

9 (a) IN GENERAL.—There is authorized to be appro-
 10 priated to carry out the provisions of sections 202, 203,
 11 and 204, \$100,000,000 for each of fiscal years 2002
 12 through 2012, to remain available until expended.

13 (b) CONDITIONS OF AUTHORIZATION.—The author-
 14 ization of appropriations under subsection (a)—

15 (1) shall be in addition to authorizations of ap-
 16 propriations in effect on the date of enactment of
 17 this Act; and

18 (2) shall not be a cap on Department of Energy
 19 fossil energy research and development and clean
 20 coal technology appropriations.

21 **SEC. 206. POWER PLANT IMPROVEMENT INITIATIVE.**

22 (a) IN GENERAL.—The Secretary shall carry out a
 23 power plant improvement initiative program that will dem-
 24 onstrate commercial applications of advanced coal-based
 25 technologies applicable to new or existing power plants,

1 including co-production plants, that, either individually or
2 in combination, advance the efficiency, environmental per-
3 formance and cost competitiveness well beyond that which
4 is in operation or has been demonstrated to date.

5 (b) PLAN.—Not later than 120 days after the date
6 of enactment of this title, the Secretary shall submit to
7 Congress a plan to carry out subsection (a) that includes
8 a description of—

9 (1) the program elements and management
10 structure to be used;

11 (2) the technical milestones to be achieved with
12 respect to each of the advanced coal-based tech-
13 nologies included in the plan; and

14 (3) the demonstration activities that will benefit
15 new or existing coal-based electric generation units
16 having at least a 50 megawatt nameplate rating in-
17 cluding improvements to allow the units to achieve
18 either—

19 (A) an overall design efficiency improve-
20 ment of not less than 3 percentage points as
21 compared with the efficiency of the unit as op-
22 erated on the date of the enactment of this title
23 and before any retrofit, repowering, replace-
24 ment or installation;

1 (B) a significant improvement in the envi-
 2 ronmental performance related to the control of
 3 sulfur dioxide, nitrogen oxide or mercury in a
 4 manner that is well below the cost of tech-
 5 nologies that are in operation or have been
 6 demonstrated to date; or

7 (C) a means of recycling or reusing a sig-
 8 nificant proportion of coal combustion wastes
 9 produced by coal-based generating units exclud-
 10 ing practices that are commercially available at
 11 the date of enactment.

12 **SEC. 207. FINANCIAL ASSISTANCE.**

13 (a) IN GENERAL.—Not later than 180 days after the
 14 date on which the Secretary submits to Congress the plan
 15 under section 206(b), the Secretary shall solicit proposals
 16 for projects which serve or benefit new or existing facilities
 17 and, either individually or in combination, are designed to
 18 achieve the levels of performance set forth in section
 19 206(b)(3).

20 (b) PROJECT CRITERIA.—A solicitation under sub-
 21 section (a) may include solicitation of a proposal for a
 22 project to demonstrate—

23 (1) the reduction of emissions of one or more
 24 pollutants; or

1 (2) the production of coal combustion byprod-
2 ucts that are capable of obtaining economic values
3 significantly greater than byproducts produced on
4 the date of enactment of this title.

5 (c) FINANCIAL ASSISTANCE.—The Secretary shall
6 provide financial assistance to projects that—

7 (1) demonstrate overall cost reductions in the
8 utilization of coal to generate useful forms of energy;

9 (2) improve the competitiveness of coal among
10 various forms of energy to maintain a diversity of
11 fuel choices in the United States to meet electricity
12 generation requirements; and

13 (3) achieve in a cost-effective manner, one or
14 more of the criteria set out in the solicitation; and

15 (4) demonstrate technologies that are applicable
16 to 25 percent of the electricity generating facilities
17 that use coal as the primary feedstock on the date
18 of enactment of this title.

19 (d) FEDERAL SHARE.—The Federal share of the cost
20 of any project funded under this section shall not exceed
21 50 percent.

22 (e) EXEMPTION FROM NEW SOURCE REVIEW PROVI-
23 SIONS.—A project funded under this section shall be ex-
24 empt from the new source review provisions of the Clean
25 Air Act (42 U.S.C. 7401 et seq.).

1 **SEC. 208. FUNDING.**

2 To carry out sections 206 and 207, there are author-
3 ized to be appropriated such sums as may be necessary.

4 **SEC. 209. RESEARCH AND DEVELOPMENT FOR ADVANCED**
5 **SAFE AND EFFICIENT COAL MINING TECH-**
6 **NOLOGIES.**

7 (a) The Secretary of Energy shall establish a cooper-
8 ative research partnership involving appropriate Federal
9 agencies, coal producers, including associations, equip-
10 ment manufacturers, universities with mining engineering
11 departments, and other relevant entities to develop mining
12 research priorities identified by the Mining Industry of the
13 Future Program and in the National Academy of Sciences
14 report on Mining Technologies, establish a process for
15 joint industry-government research, and expand mining
16 research capabilities at universities.

17 (b) There are authorized to be appropriated to carry
18 out the requirements of this section, \$10,000,000 in fiscal
19 year 2002, \$12,000,000 in fiscal year 2003, and
20 \$15,000,000 in fiscal year 2004. At least 20 percent of
21 any funds appropriated shall be dedicated to research car-
22 ried out at universities.

23 **SEC. 210. RAILROAD EFFICIENCY.**

24 (a) The Secretary shall, in conjunction with the Sec-
25 retaries of Transportation and Defense, and the Adminis-
26 trator of the Environmental Protection Agency, establish

1 a public-private research partnership involving the Federal
 2 Government, railroad carriers, locomotive manufacturers,
 3 and the Association of American Railroads. The goal of
 4 the initiative shall include developing and demonstrating
 5 locomotive technologies that increase fuel economy, reduce
 6 emissions, improve safety, and lower costs.

7 (b) There are authorized to be appropriated to carry
 8 out the requirements of this section \$50,000,000 in fiscal
 9 year 2002, \$60,000,000 in fiscal year 2003, and
 10 \$70,000,000 in fiscal year 2004.

11 **TITLE III—OIL AND GAS**

12 **Subtitle A—Deepwater and**

13 **Frontier Royalty Relief**

14 **SEC. 301. SHORT TITLE.**

15 This part may be referred to as the “Outer Conti-
 16 nental Shelf Deep Water and Frontier Royalty Relief
 17 Act”.

18 **SEC. 302. AMENDMENTS TO THE OUTER CONTINENTAL**

19 **SHELF LANDS ACT.**

20 (a) Section 8(a)(3) of the Outer Continental Shelf
 21 Lands Act (43 U.S.C. 1337(a)(3)), is amended—

- 22 (1) by designating the provisions of paragraph
 23 (3) as subparagraph (A) of such paragraph (3); and
 24 (2) by inserting after subparagraph (A), as so
 25 designated, the following:

1 “(B) In the Western and Central Planning
2 Areas of the Gulf of Mexico and the portion of
3 the Eastern Planning Area of the Gulf of Mex-
4 ico encompassing whole lease blocks lying west
5 of 87 degrees, 30 minutes West longitude, the
6 Secretary may, in order to—

7 “(i) promote development or increased
8 production on producing or non-producing
9 leases; or

10 “(ii) encourage production of mar-
11 ginal resources on producing or non-pro-
12 ducing leases;

13 through primary, secondary, or tertiary recov-
14 ery means, reduce or eliminate any royalty or
15 net profit share set forth in the lease(s). With
16 the lessee’s consent, the Secretary may make
17 other modifications to the royalty or net profit
18 share terms of the lease in order to achieve
19 these purposes.

20 “(C)(i) Notwithstanding the provisions of
21 this Act other than this subparagraph, with re-
22 spect to any lease or unit in existence on the
23 date of enactment of the Outer Continental
24 Shelf Deep Water Royalty Relief Act meeting
25 the requirements of this subparagraph, no roy-

1 alty payments shall be due on new production,
2 as defined in clause (iv) of this subparagraph,
3 from any lease or unit located in water depths
4 of 200 meters or greater in the Western and
5 Central Planning Areas of the Gulf of Mexico,
6 including that portion of the Eastern Planning
7 Area of the Gulf of Mexico encompassing whole
8 lease blocks lying west of 87 degrees, 30 min-
9 utes West longitude, until such volume of pro-
10 duction as determined pursuant to clause (ii)
11 has been produced by the lessee.

12 “(ii) Upon submission of a complete appli-
13 cation by the lessee, the Secretary shall deter-
14 mine within 180 days of such application
15 whether new production from such lease or unit
16 would be economic in the absence of the relief
17 from the requirement to pay royalties provided
18 for by clause (i) of this subparagraph. In mak-
19 ing such determination, the Secretary shall con-
20 sider the increased technological and financial
21 risk of deep water development and all costs as-
22 sociated with exploring, developing, and pro-
23 ducing from the lease. The lessee shall provide
24 information required for a complete application
25 to the Secretary prior to such determination.

1 The Secretary shall clearly define the informa-
2 tion required for a complete application under
3 this section. Such application may be made on
4 the basis of an individual lease or unit. If the
5 Secretary determines that such new production
6 would be economic in the absence of the relief
7 from the requirement to pay royalties provided
8 for by clause (i) of this subparagraph, the pro-
9 visions of clause (i) shall not apply to such pro-
10 duction. If the Secretary determines that such
11 new production would not be economic in the
12 absence of the relief from the requirement to
13 pay royalties provided for by clause (i), the Sec-
14 retary must determine the volume of production
15 from the lease or unit on which no royalties
16 would be due in order to make such new pro-
17 duction economically viable; except that for new
18 production as defined in clause (iv)(I), in no
19 case will that volume be less than 17.5 million
20 barrels of oil equivalent in water depths of 200
21 to 400 meters, 52.5 million barrels of oil equiv-
22 alent in 400–800 meters of water, and 87.5
23 million barrels of oil equivalent in water depths
24 greater than 800 meters. Redetermination of
25 the applicability of clause (i) shall be under-

1 taken by the Secretary when requested by the
2 lessee prior to the commencement of the new
3 production and upon significant change in the
4 factors upon which the original determination
5 was made. The Secretary shall make such rede-
6 termination within 120 days of submission of
7 a complete application. The Secretary may ex-
8 tend the time period for making any determina-
9 tion or redetermination under this clause for 30
10 days, or longer if agreed to by the applicant,
11 if circumstances so warrant. The lessee shall be
12 notified in writing of any determination or rede-
13 termination and the reasons for the assump-
14 tions used for such determination. Any deter-
15 mination or redetermination under this clause
16 shall be a final agency action. The Secretary's
17 determination or redetermination shall be sub-
18 ject to judicial review under section 10(a) of the
19 Administrative Procedures Act (5 U.S.C. 702),
20 only for actions filed within 30 days of the Sec-
21 retary's determination or redetermination.

22 “(iii) In the event that the Secretary fails
23 to make the determination or redetermination
24 called for in clause (ii) upon application by the
25 lessee within the time period, together with any

1 extension thereof, provided for by clause (ii), no
2 royalty payments shall be due on new produc-
3 tion as follows:

4 “(I) for new production, as defined in
5 clause (iv)(I) of this subparagraph, no roy-
6 alty shall be due on such production ac-
7 cording to the schedule of minimum vol-
8 umes specified in clause (ii) of this sub-
9 paragraph.

10 “(II) For new production, as defined
11 in clause (iv)(II) of this subparagraph, no
12 royalty shall be due on such production for
13 one year following the start of such pro-
14 duction.

15 “(iv) For purposes of this subparagraph,
16 the term ‘new production’ is—

17 “(I) any production from a lease from
18 which no royalties are due on production,
19 other than test production, prior to the
20 date of enactment of the Outer Continental
21 Shelf Deep Water Royalty Relief Act; or

22 “(II) any production resulting from
23 lease development activities pursuant to a
24 Development Operations Coordination Doc-
25 ument, or supplement thereto that would

1 expand production significantly beyond the
2 level anticipated in the Development Oper-
3 ations Coordination Document, approved
4 by the Secretary after the date of enact-
5 ment of the Outer Continental Shelf Deep
6 Water Royalty Relief Act.

7 “(v) During the production of volumes de-
8 termined pursuant to clause (ii) or (iii) of this
9 subparagraph, in any year during which the
10 arithmetic average of the closing prices on the
11 New York Mercantile Exchange for light sweet
12 crude oil exceeds \$28.00 per barrel, any produc-
13 tion of oil will be subject to royalties at the
14 lease stipulated royalty rate. Any production
15 subject to this clause shall be counted toward
16 the production volume determined pursuant to
17 clause (ii) or (iii). Estimated royalty payments
18 will be made if such average of the closing
19 prices for the previous year exceeds \$28.00.
20 After the end of the calendar year, when the
21 new average price can be calculated, lessees will
22 pay any royalties due, with interest but without
23 penalty, or can apply for a refund, with inter-
24 est, of any overpayment.

1 “(vi) During the production of volumes de-
2 termined pursuant to clause (ii) or (iii) of this
3 subparagraph, in any year during which the
4 arithmetic average of the closing prices on the
5 New York Mercantile Exchange for natural gas
6 exceeds \$3.50 per million British thermal units,
7 any production of natural gas will be subject to
8 royalties at the lease stipulated royalty rate.
9 Any production subject to this clause shall be
10 counted toward the production volume deter-
11 mined pursuant to clause (ii) or (iii). Estimated
12 royalty payments will be made if such average
13 of the closing prices for the previous year ex-
14 ceeds \$3.50. After the end of the calendar year,
15 when the new average price can be calculated,
16 lessees will pay any royalties due, with interest
17 but without penalty, or can apply for a refund,
18 with interest, of any overpayment.

19 “(vii) The prices referred to in clauses (v)
20 and (vi) of this subparagraph shall be changed
21 during any calendar year after 1994 by the per-
22 centage, if any, by which the implicit price
23 deflator for the gross domestic product changed
24 during the preceding calendar year.”.

1 (b) Section 8(a)(1)(D) of the Outer Continental Shelf
2 Lands Act (43 U.S.C. 1337(a)(1)(D)) is amended by
3 striking the word “area;” and inserting in lieu thereof the
4 word “area,” and the following new text:

5 “except in the Arctic areas of Alaska, where the
6 Secretary is authorized to set the net profit
7 share at 16 and $\frac{2}{3}$ percent. For purposes of
8 this section, ‘Arctic areas’ means the Beaufort
9 Sea and Chukchi Sea Planning Areas of Alas-
10 ka.”

11 (c) Section 8(a) of the Outer Continental Shelf Lands
12 Act (43 U.S.C. 1337(a)) is amended by adding a new
13 paragraph (10) at the end thereof:

14 “(10) After an oil and gas lease is granted pur-
15 suant to any of the bidding systems of paragraph
16 (1) of this subsection, the Secretary shall reduce any
17 future royalty or rental obligation of the lessee on
18 any lease issued by the Secretary (and proposed by
19 the lessee for such reduction) by an amount equal
20 to—

21 “(A) 10 percent of the qualified costs of
22 exploratory wells drilled or geophysical work
23 performed on any lease issued by the Secretary,
24 whichever is greater, pursuant to this Act in
25 Arctic areas of Alaska; and

1 “(B) an additional 10 percent of the quali-
2 fied costs of any such exploratory wells which
3 are located ten or more miles from another well
4 drilled for oil and gas.

5 For purposes of this Act, ‘qualified costs’ shall mean
6 the costs allocated to the exploratory well or geo-
7 physical work in support of an exploration program
8 pursuant to 26 U.S.C. as amended; ‘exploratory
9 well’ shall mean either an exploratory well as defined
10 by the United States Securities and Exchange Com-
11 mission in 17 C.F.R. 210.4–10(a)(10), as amended,
12 or a well three or more miles from any oil or gas
13 well or a pipeline which transports oil or gas to a
14 market or terminal; ‘geophysical work’ shall mean
15 all geophysical data gathering methods used in hy-
16 drocarbon exploration and includes seismic, gravity,
17 magnetic, and electromagnetic measurements; and
18 all distances shall be measured in horizontal dis-
19 tance. When a measurement beginning or ending
20 point is a well, the measurement point shall be the
21 bottom hole location of that well.”

22 **SEC. 303. NEW LEASES.**

23 Section 8(a)(1) of the Outer Continental Shelf Lands
24 Act, as amended (43 U.S.C. 1337(a)(1)) is amended—

1 (1) by redesignating subparagraph (H) as sub-
2 paragraph (I);

3 (2) by striking “or” at the end of subparagraph
4 (G); and

5 (3) by inserting after subparagraph (G) the fol-
6 lowing new subparagraph:

7 “(H) cash bonus bid with royalty at no less
8 than 12 and 1/2 per centum fixed by the Sec-
9 retary in amount or value of production saved,
10 removed, or sold, and with suspension of royal-
11 ties for a period, volume, or value of production
12 determined by the Secretary, which suspensions
13 may vary based on the price of production from
14 the lease; or”.

15 **SEC. 304. LEASE SALES.**

16 For all tracts located in water depths of 200 meters
17 or greater in the Western and Central Planning Area of
18 the Gulf of Mexico, including that portion of the Eastern
19 Planning Area of the Gulf of Mexico encompassing whole
20 lease blocks lying west of 87 degrees, 30 minutes West
21 longitude, any lease sale within five years of the date of
22 enactment of this part, shall use the bidding system au-
23 thorized in section 8(a)(1)(H) of the Outer Continental
24 Shelf Lands Act, as amended by this part, except that the

1 suspension of royalties shall be set at a volume of not less
 2 than the following—

3 (1) 17.5 million barrels of oil equivalent for
 4 leases in water depths of 200 to 400 meters;

5 (2) 52.5 million barrels of oil equivalent for
 6 leases in 400 to 800 meters of water; and

7 (3) 87.5 million barrels of oil equivalent for
 8 leases in water depths greater than 800 meters.

9 **SEC. 305. REGULATIONS.**

10 The Secretary shall promulgate such rules and regu-
 11 lations as are necessary to implement the provisions of this
 12 part within 180 days after the enactment of this Act.

13 **SEC. 306. SAVINGS CLAUSE.**

14 Nothing in this part shall be construed to affect any
 15 offshore pre-leasing, leasing, or development moratorium,
 16 including any moratorium applicable to the Eastern Plan-
 17 ning Area of the Gulf of Mexico located off the Gulf Coast
 18 of Florida.

19 **Subtitle B—Oil and Gas Royalties**
 20 **in Kind**

21 **SEC. 310. PROGRAM ON OIL AND GAS ROYALTIES IN KIND.**

22 (a) **APPLICABILITY OF SECTION.**—Notwithstanding
 23 any other provision of law, the provisions of this section
 24 shall apply to all royalty in kind accepted by the Secretary
 25 of the Interior under any Federal oil or gas lease or permit

1 under section 36 of the Mineral Leasing Act (30 U.S.C.
2 192) or section 27 of the Outer Continental Shelf Lands
3 (43 U.S.C. 1353) or any other mineral leasing law from
4 the date of enactment of this Act through September 30,
5 2006.

6 (b) TERMS AND CONDITIONS.—All royalty accruing
7 to the United States under any Federal oil or gas lease
8 or permit under the Mineral Leasing Act (30 U.S.C. 181
9 et seq.) or the Outer Continental Shelf Lands Act (43
10 U.S.C. 1331 et seq.) or any other mineral leasing law on
11 demand of the Secretary of the Interior shall be paid in
12 oil or gas. If the Secretary of the Interior elects to accept
13 the royalty in kind:

14 (1) Delivery by, or on behalf of, the lessee of
15 the royalty amount and quality due at the lease sat-
16 isfies the lessee's royalty obligation for the amount
17 delivered, except that transportation and processing
18 reimbursements paid to, or deductions claimed by,
19 the lessee shall be subject to review and audit.

20 (2) Royalty production shall be placed in mar-
21 ketable condition at no cost to the United States.

22 (3) The Secretary of the Interior may—

23 (A) sell or otherwise dispose of any royalty
24 oil or gas taken in kind for not less than fair
25 market value; and

1 (B) transport or process any oil or gas roy-
 2 alty taken in kind.

3 (4) The Secretary of the Interior may, notwith-
 4 standing section 3302 of title 31, United States
 5 Code, retain and use a portion of the revenues from
 6 the sale of oil and gas royalties taken in kind that
 7 otherwise would be deposited to miscellaneous re-
 8 ceipts, without regard to fiscal year limitation, or
 9 may use royalty production, to pay the cost of—

10 (A) transporting the oil or gas,

11 (B) processing the gas, or

12 (C) disposing of the oil or gas.

13 (5) The Secretary may not use revenues from
 14 the sale of oil and gas royalties taken in kind to pay
 15 for personnel, travel or other administrative costs of
 16 the Federal Government.

17 (c) REIMBURSEMENT OF COST.—If the lessee, pursu-
 18 ant to an agreement with the United States or as provided
 19 in the lease, processes the gas or delivers the royalty oil
 20 or gas at a point not on or adjacent to the lease area,
 21 the Secretary of the Interior shall reimburse the lessee for
 22 the reasonable costs of transportation (not including gath-
 23 ering) from the lease to the point of delivery or for proc-
 24 essing costs, or, at the discretion of the Secretary of the
 25 Interior, allow the lessee to deduct such transportation or

1 processing costs in reporting and paying royalties in value
2 for other Federal oil and gas leases.

3 (d) BENEFIT TO THE UNITED STATES.—The Sec-
4 retary shall administer any program taking royalty oil or
5 gas in kind only if the Secretary determines that the pro-
6 gram is providing benefits to the United States greater
7 than or equal to those which would be realized under a
8 comparable royalty in value program.

9 (e) REPORT TO CONGRESS.—For every fiscal year,
10 beginning in 2002 through 2006, in which the United
11 States takes oil or gas royalties within any States or from
12 the Outer Continental Shelf in kind, excluding royalties
13 taken in kind and sold to refineries under subsection (h)
14 of this section, the Secretary of the Interior shall provide
15 a report to Congress describing—

16 (1) the methodology or methodologies used by
17 the Secretary to determine compliance with sub-
18 section (d), including performance standards for
19 comparing to amounts likely to have been received
20 had royalties been taken in value;

21 (2) an explanation of the evaluation that led the
22 Secretary to take royalties in kind from a lease or
23 group of leases, including the expected revenue effect
24 of taking royalties in kind;

1 (3) actual amounts realized from taking roy-
2 ties in kind, and costs and savings associated with
3 taking royalties in kind; and

4 (4) an evaluation of other relevant public bene-
5 fits or detriments associated with taking royalties in
6 kind.

7 (f) DEDUCTION OF EXPENSES.—(1) Prior to making
8 disbursements under section 35 of the Mineral Leasing
9 Act (30 U.S.C. 191) or section 8(g) of the Outer Conti-
10 nental Shelf Lands Act (30 U.S.C. 1337(g)) or other ap-
11 plicable provision of law, of revenues derived from the sale
12 of royalty production taken in kind from a lease, the Sec-
13 retary of the Interior shall deduct amounts paid or de-
14 ducted under paragraphs (b)(3) and (c), and shall deposit
15 such amounts to miscellaneous receipts.

16 (2) If the Secretary of the Interior allows the lessee
17 to deduct transportation or processing costs under para-
18 graph (c), the Secretary of the Interior may not reduce
19 any payments to recipients of revenues derived from any
20 other Federal oil and gas lease as a consequence of that
21 deduction.

22 (g) CONSULTATION WITH STATES.—The Secretary
23 of the Interior will consult with a State prior to conducting
24 a royalty in kind program within the State and may dele-
25 gate management of any portion of the Federal royalty

1 in kind program to such State except as otherwise prohib-
2 ited by Federal law. The Secretary shall also consult annu-
3 ally with any State from which Federal royalty oil or gas
4 is being taken in kind to ensure to the maximum extent
5 practicable that the royalty in kind program provides reve-
6 nues to the State greater than or equal to those which
7 would be realized under a comparable royalty in value pro-
8 gram.

9 (h) PROVISIONS FOR SMALL REFINERIES.—(1) If the
10 Secretary of the Interior determines that sufficient sup-
11 plies of crude oil are not available in the open market to
12 refineries not having their own source of supply for crude
13 oil, the Secretary may grant preference to such refineries
14 in the sale of any royalty oil accruing or reserved to the
15 United States under Federal oil and gas leases issued
16 under any mineral leasing law, for processing or use in
17 such refineries at private sale at not less than fair market
18 value.

19 (2) In selling oil under this subsection, the Secretary
20 of the Interior may at his discretion prorate such oil
21 among such refineries in the area in which the oil is pro-
22 duced.

23 (i) DISPOSITION TO FEDERAL AGENCIES.—(1) Any
24 royalty oil or gas taken in kind from onshore oil and gas

1 leases may be sold at not less than the fair market value
2 to any department or agency of the United States.

3 (2) Any royalty oil or gas taken in kind from Federal
4 oil and gas leases on the Outer Continental Shelf may be
5 disposed of under 43 U.S.C. 1353(a)(3).

6 **Subtitle C—Use of Royalty in Kind**
7 **Oil To Fill the Strategic Petro-**
8 **leum Reserve**

9 **SEC. 320. USE OF ROYALTY IN KIND OIL TO FILL THE STRA-**
10 **TEGIC PETROLEUM RESERVE.**

11 The Secretary of the Interior shall enter into an
12 agreement with the Secretary of Energy to transfer title
13 to the Federal share of crude oil production from Federal
14 lands for use at the discretion of the Secretary of Energy
15 in filling the Strategic Petroleum Reserve during periods
16 of crude oil market stability. The Secretary of Energy may
17 also use the Federal share of crude oil produced from Fed-
18 eral lands for other disposal within the Federal Govern-
19 ment, as he may determine, to carry out the energy policy
20 of the United States.

1 **Subtitle D—Improvements to Fed-**
 2 **eral Oil and Gas Lease Manage-**
 3 **ment**

4 **SEC. 330. SHORT TITLE.**

5 This Part may be cited as the “Federal Oil and Gas
 6 Lease Management Improvement Act of 2000”.

7 **SEC. 331. DEFINITIONS.**

8 In this Part—

9 (1) APPLICATION FOR A PERMIT TO DRILL.—

10 The term “application for a permit to drill” means
 11 a drilling plan including design, mechanical, and en-
 12 gineering aspects for drilling a well.

13 (2) FEDERAL LAND.—

14 (A) IN GENERAL.—The term “Federal
 15 land” means all land and interests in land
 16 owned by the United States that are subject to
 17 the mineral leasing laws, including mineral re-
 18 sources or mineral estates reserved to the
 19 United States in the conveyance of a surface or
 20 non-mineral estate.

21 (B) EXCLUSION.—The term “Federal
 22 land” does not include—

23 (i) Indian land (as defined in section
 24 3 of the Federal Oil and Gas Royalty Man-

agement Act of 1982 (30 U.S.C. 1702));

or

(ii) submerged land on the Outer Continental Shelf (as defined in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331)).

(3) OIL AND GAS CONSERVATION AUTHORITY.—

The term “oil and gas conservation authority” means the agency or agencies in each State responsible for regulating for conservation purposes operations to explore for and produce oil and natural gas.

(4) PROJECT.—The term “project” means an activity by a lessee, an operator, or an operating rights owner to explore for, develop, produce, or transport oil or gas resources.

(5) SECRETARY.—The term “Secretary” means—

(A) the Secretary of the Interior, with respect to land under the administrative jurisdiction of the Department of the Interior; and

(B) the Secretary of Agriculture, with respect to land under the administrative jurisdiction of the Department of Agriculture.

1 (6) SURFACE USE PLAN OF OPERATIONS.—The
 2 term “surface use plan of operations” means a plan
 3 for surface use, disturbance, and reclamation.

4 **SEC. 332. NO PROPERTY RIGHT.**

5 Nothing in this Part gives a State a property right
 6 or interest in any Federal lease or land.

7 **SEC 333. TRANSFER OF AUTHORITY.**

8 (a) NOTIFICATION.—Not before the date that is 180
 9 days after the date of enactment of this Act, a State may
 10 notify the Secretary of its intent to accept authority for
 11 regulation of operations, as described in subparagraphs
 12 (A) through (K) of subsection (b)(2), under oil and gas
 13 leases on Federal land within the State.

14 (b) TRANSFER OF AUTHORITY—

15 (1) IN GENERAL.—Effective 180 days after the
 16 Secretary receives the State’s notice, authority for
 17 the regulation of oil and gas leasing operations is
 18 transferred from the Secretary to the State.

19 (2) AUTHORITY INCLUDED.—The authority
 20 transferred under paragraph (1) includes—

21 (A) processing and approving applications
 22 for permits to drill, subject to surface use
 23 agreements and other terms and conditions de-
 24 termined by the Secretary;

25 (B) production operations;

- 1 (C) well testing;
- 2 (D) well completion;
- 3 (E) well spacing;
- 4 (F) communication;
- 5 (G) conversion of a producing well to a
- 6 water well;
- 7 (H) well abandonment procedures;
- 8 (I) inspections;
- 9 (J) enforcement activities; and
- 10 (K) site security.

11 (c) RETAINED AUTHORITY.—The Secretary shall—

12 (1) retain authority over the issuance of leases
13 and the approval of surface use plans of operations
14 and project-level environmental analyses; and

15 (2) spend appropriated funds to ensure that
16 timely decisions are made respecting oil and gas
17 leasing, taking into consideration multiple uses of
18 Federal land, socioeconomic and environmental im-
19 pacts, and the results of consultations with State
20 and local government officials.

21 **SEC. 334. ACTIVITY FOLLOWING TRANSFER OF AUTHORITY.**

22 (a) FEDERAL AGENCIES.—Following the transfer of
23 authority, no Federal agency shall exercise the authority
24 formerly held by the Secretary as to oil and gas lease oper-
25 ations and related operations on Federal land.

1 (b) STATE AUTHORITY.—

2 (1) IN GENERAL.—Following the transfer of au-
3 thority, each State shall enforce its own oil and gas
4 conservation laws and requirements pertaining to
5 transferred oil and gas lease operations and related
6 operations with due regard to the national interest
7 in the expedited, environmentally sound development
8 of oil and gas resources in a manner consistent with
9 oil and gas conservation principles.

10 (2) APPEALS.—Following a transfer of author-
11 ity under section 333, an appeal of any decision
12 made by a State oil and gas conservation authority
13 shall be made in accordance with State administra-
14 tive procedures.

15 (c) PENDING ENFORCEMENT ACTIONS.—The Sec-
16 retary may continue to enforce any pending actions re-
17 specting acts committed before the date on which author-
18 ity is transferred to a State under section 333 until those
19 proceedings are concluded.

20 (d) PENDING APPLICATIONS.—

21 (1) TRANSFER TO STATE.—All applications re-
22 specting oil and gas lease operations and related op-
23 erations on Federal land pending before the Sec-
24 retary on the date on which authority is transferred
25 under section 333 shall be immediately transferred

1 to the oil and gas conservation authority of the
2 State in which the lease is located.

3 (2) ACTION BY THE STATE.—The oil and gas
4 conservation authority shall act on the application in
5 accordance with State laws (including regulations)
6 and requirements.

7 **SEC. 335. COMPENSATION FOR COSTS.**

8 (a) IN GENERAL.—Subject to the availability of ap-
9 propriations, the Secretary shall compensate any State for
10 costs incurred to carry out the authorities transferred
11 under section 333.

12 (b) PAYMENT SCHEDULE.—Payments shall be made
13 not less frequently than every quarter.

14 (c) COST BREAKDOWN REPORT.—Each State seek-
15 ing compensation shall report to the Secretary a cost
16 breakdown for the authorities transferred.

17 **SEC. 336. APPLICATIONS.**

18 (a) LIMITATION ON COST RECOVERY.—Notwith-
19 standing sections 304 and 504 of the Federal Land Policy
20 and Management Act of 1976 (43 U.S.C. 1734, 1764) and
21 section 9701 of Title 31, United States Code, the Sec-
22 retary shall not recover the Secretary's costs with respect
23 to applications and other documents relating to oil and
24 gas leases.

1 (b) COMPLETION OF PLANNING DOCUMENTS AND
2 ANALYSES.—

3 (1) IN GENERAL.—The Secretary shall complete
4 any resource management planning documents and
5 analyses not later than 90 days after receiving any
6 offer, application, or request for which a planning
7 document or analysis is required to be prepared.

8 (2) PREPARATION BY APPLICANT OR LESSEE.—
9 If the Secretary is unable to complete the document
10 or analysis within the time prescribed by paragraph
11 (1), the Secretary shall notify the applicant or lessee
12 of the opportunity to prepare the required document
13 or analysis for the agency's review and use in deci-
14 sionmaking.

15 (c) REIMBURSEMENT FOR COSTS OF NEPA ANAL-
16 YSES, DOCUMENTATION, AND STUDIES.—If—

17 (1) adequate funding to enable the Secretary to
18 timely prepare a project-level analysis required
19 under the National Environmental Policy Act of
20 1969 (42 U.S.C. 4321 et seq.) with respect to an oil
21 or gas lease is not appropriated; and

22 (2) the lessee, operator, or operating rights
23 owner voluntarily pays for the cost of the required
24 analysis, documentation, or related study;

1 the Secretary shall reimburse the lessee, operator, or oper-
2 ating rights owner for its costs through royalty credits at-
3 tributable to the lease, unit agreement, or project area.

4 **SEC. 337. TIMELY ISSUANCE OF DECISIONS.**

5 (a) IN GENERAL.—The Secretary shall ensure the
6 timely issuance of Federal agency decisions respecting oil
7 and gas leasing and operations on Federal land.

8 (b) OFFER TO LEASE.—

9 (1) DEADLINE.—The Secretary shall accept or
10 reject an offer to lease not later than 90 days after
11 the filing of the offer.

12 (2) FAILURE TO MEET DEADLINE.—If an offer
13 is not acted upon within that time, the offer shall be
14 deemed to have been accepted.

15 (c) APPLICATION FOR PERMIT TO DRILL.—

16 (1) DEADLINE.—The Secretary and a State
17 that has accepted a transfer of authority under sec-
18 tion 610 shall approve or disapprove an application
19 for permit to drill not later than 30 days after re-
20 ceiving a complete application.

21 (2) FAILURE TO MEET DEADLINE.—If the ap-
22 plication is not acted on within the time prescribed
23 by paragraph (1), the application shall be deemed to
24 have been approved.

1 (d) SURFACE USE PLAN OF OPERATIONS.—The Sec-
 2 retary shall approve or disapprove a surface use plan of
 3 operations not later than 30 days after receipt of a com-
 4 plete plan.

5 (e) ADMINISTRATIVE APPEALS.—

6 (1) DEADLINE.—From the time that a Federal
 7 oil and gas lessee or operator files a notice of admin-
 8 istrative appeals of a decision or order of an officer
 9 or employee of the Department of the Interior or the
 10 Forest Service respecting a Federal oil and gas Fed-
 11 eral lease, the Secretary shall have 2 years in which
 12 to issue a final decision in the appeal.

13 (2) FAILURE TO MEET DEADLINE.—If no final
 14 decision has been issued within the time prescribed
 15 by paragraph (1), the appeal shall be deemed to
 16 have been granted.

17 **SEC. 338. ELIMINATION OF UNWARRANTED DENIALS AND**
 18 **STAYS.**

19 (a) IN GENERAL.—The Secretary shall ensure that
 20 unwarranted denials and stays of lease issuance and un-
 21 warranted restrictions on lease operations are eliminated
 22 from the administration of oil and gas leasing on Federal
 23 land.

24 (b) LAND DESIGNATED FOR MULTIPLE USE.—

1 (1) IN GENERAL.—Land designated as available
2 for multiple use under Bureau of Land Management
3 resource management plans and Forest Service leas-
4 ing analyses shall be available for oil and gas leasing
5 without lease stipulations more stringent than re-
6 strictions on surface use and operations imposed
7 under the laws (including regulations) of the State
8 oil and gas conservation authority unless the Sec-
9 retary includes in the decision approving the man-
10 agement plan or leasing analysis a written expla-
11 nation why more stringent stipulations are war-
12 ranted.

13 (2) APPEAL.—Any decision to require a more
14 stringent stipulation shall be administratively ap-
15 pealable and, following a final agency decision, shall
16 be subject to judicial review.

17 (c) REJECTION OF OFFER TO LEASE.—

18 (1) IN GENERAL.—If the Secretary rejects an
19 offer to lease on the ground that the land is unavail-
20 able for leasing, the Secretary shall provide a writ-
21 ten, detailed explanation of the reasons the land is
22 unavailable for leasing.

23 (2) PREVIOUS RESOURCE MANAGEMENT DECI-
24 SION.—If the determination of unavailability is
25 based on a previous resource management decision,

1 the explanation shall include a careful assessment of
2 whether the reasons underlying the previous decision
3 are still persuasive.

4 (3) SEGREGATION OF AVAILABLE LAND FROM
5 UNAVAILABLE LAND.—The Secretary may not reject
6 an offer to lease land available for leasing on the
7 ground that the offer includes land unavailable for
8 leasing, and the Secretary shall segregate available
9 land from unavailable land, on the offeror's request
10 following notice by the Secretary, before acting on
11 the offer to lease.

12 (d) DISAPPROVAL OR REQUIRED MODIFICATION OF
13 SURFACE USE PLANS OF OPERATIONS AND APPLICATION
14 FOR PERMIT TO DRILL.—The Secretary shall provide a
15 written, detailed explanation of the reasons for dis-
16 approving or requiring modifications of any surface use
17 plan of operations or application for permit to drill.

18 (e) EFFECTIVENESS OF DECISION.—A decision of the
19 Secretary respecting an oil and gas lease shall be effective
20 pending administrative appeal to the appropriate office
21 within the Department of the Interior or the Department
22 of Agriculture unless that office grants a stay in response
23 to a petition satisfying the criteria for a stay established
24 by section 4.21(b) of title 43, Code of Federal Regulations
25 (or any successor regulation).

1 **SEC. 339. REPORTS.**

2 (a) IN GENERAL.—Not later than March 31, 2002,
3 the Secretaries shall jointly submit to the Congress a re-
4 port explaining the most efficient means of eliminating
5 overlapping jurisdiction, duplication of effort, and incon-
6 sistent policymaking and policy implementation as be-
7 tween the Bureau of Land Management and the Forest
8 Service.

9 (b) RECOMMENDATIONS.—The report shall include
10 recommendations on statutory changes needed to imple-
11 ment the report's conclusions.

12 **Subtitle E—Royalty Reinvestment**
13 **in America**

14 **SEC. 351. ROYALTY INCENTIVE PROGRAM.**

15 (a) IN GENERAL.—To encourage exploration and de-
16 velopment expenditures on Federal land and the Outer
17 Continental Shelf for the development of oil and gas re-
18 sources when the cash price of West Texas Intermediate
19 crude oil, as posted on the Dow Jones Commodities Index
20 chart is less than \$18 per barrel for 90 consecutive pricing
21 days or when natural gas prices as delivered at Henry
22 Hub, Louisiana, are less than \$2.30 per million British
23 thermal units for 90 consecutive days, the Secretary shall
24 allow a credit against the payment of royalties on Federal
25 oil production and gas production, respectively, in an
26 amount equal to 20 percent of the capital expenditures

1 made on exploration and development activities on Federal
2 oil and gas leases.

3 (b) NO CREDITING AGAINST ONSHORE FEDERAL
4 ROYALTY OBLIGATIONS.—In no case shall such capital ex-
5 penditures made on Outer Continental Shelf leases be
6 credited against onshore Federal royalty obligations.

7 **TITLE IV—NUCLEAR**
8 **Subtitle A—Price-Anderson**
9 **Amendments**

10 **SEC. 401. SHORT TITLE.**

11 (b) This Subtitle may be cited as the “Price-Ander-
12 son Amendments Act of 2001”.

13 **SEC. 402. INDEMNIFICATION AUTHORITY.**

14 (a) INDEMNIFICATION OF NRC LICENSEES.—Section
15 170c. of the Atomic Energy Act of 1954 (42 U.S.C.
16 2210(c)) is amended by striking “August 1, 2002” each
17 place it appears and inserting “August 1, 2012”.

18 (b) INDEMNIFICATION OF DOE CONTRACTORS.—
19 Section 170 d.(1)(A) of the Atomic Energy Act of 1954
20 (42 U.S.C. 2210(d)(1)(A)) is amended by striking “, until
21 August 1, 2002,”.

22 (c) INDEMNIFICATION OF NONPROFIT EDUCATIONAL
23 INSTITUTIONS.—Section 170 k. of the Atomic Energy Act
24 of 1954 (42 U.S.C. 2210(k)) is amended by striking “Au-

1 gust 1, 2002” each place it appears and inserting “August
2 1, 2012”.

3 **SEC. 403. MAXIMUM ASSESSMENT.**

4 Section 170 b.(1) of the Atomic Energy Act of 1954
5 (42 U.S.C. 2210(b)(1)) is amended by striking
6 “\$10,000,000” and inserting “\$20,000,000”.

7 **SEC. 404. DOE LIABILITY LIMIT.**

8 (a) AGGREGATE LIABILITY LIMIT.—Section 170 d.
9 of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d))
10 is amended by striking subsection (2) and inserting the
11 following:

12 “(2) In agreements of indemnification entered
13 into under paragraph (1), the Secretary—

14 “(A) may require the contractor to provide
15 and maintain financial protection of such a type
16 and in such amounts as the Secretary shall de-
17 termine to be appropriate to cover public liabil-
18 ity arising out of or in connection with the con-
19 tractual activity, and

20 “(B) shall indemnify the persons indem-
21 nified against such claims above the amount of
22 the financial protection required, in the amount
23 of \$10,000,000,000 (subject to adjustment for
24 inflation under subsection t.), in the aggregate,
25 for all persons indemnified in connection with

1 such contract and for each nuclear incident, in-
2 cluding such legal costs of the contractor as are
3 approved by the Secretary.”.

4 (b) CONTRACT AMENDMENTS.—Section 170 d. of the
5 Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is further
6 amended by striking paragraph (3) and inserting the fol-
7 lowing:

8 “(3) All agreements of indemnification under
9 which the Department of Energy (or its predecessor
10 agencies) may be required to indemnify any person,
11 shall be deemed to be amended, on the date of the
12 enactment of the Price-Anderson Amendments Act
13 of 2001, to reflect the amount of indemnity for pub-
14 lic liability and any applicable financial protection
15 required of the contractor under this subsection on
16 such date.”.

17 **SEC. 405. INCIDENTS OUTSIDE THE UNITED STATES.**

18 (a) AMOUNT OF INDEMNIFICATION.—Section 170
19 d.(5) of the Atomic Energy Act of 1954 (42 U.S.C.
20 2210(d)(5)) is amended by striking “\$100,000,000” and
21 inserting “\$500,000,000”.

22 (b) LIABILITY LIMIT.—Section 170e.(4) of the Atom-
23 ic Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended
24 by striking “\$100,000,000” and inserting
25 “\$500,000,000”.

1 **SEC. 406. REPORTS.**

2 Section 170 p. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210(p)) is amended by striking “August 1, 1998”
4 and inserting “August 1, 2008”.

5 **SEC. 407. INFLATION ADJUSTMENT.**

6 Section 170 t. of the Atomic Energy Act of 1954 (42
7 U.S.C. 2210(t)) is amended—

8 (1) by renumbering paragraph (2) as paragraph
9 (3); and

10 (2) by adding after paragraph (1) the following
11 new paragraph:

12 “(2) The Secretary shall adjust the amount of
13 indemnification provided under an agreement of in-
14 demnification under subsection d. not less than once
15 during each 5-year period following the date of the
16 enactment of the Price-Anderson Amendments Act
17 of 2001, in accordance with the aggregate percent-
18 age change in the Consumer Price Index since—

19 “(A) such date of enactment, in the case
20 of the first adjustment under this subsection; or

21 “(B) the previous adjustment under this
22 subsection.”.

23 **SEC. 408. CIVIL PENALTIES.**

24 (a) **REPEAL OF AUTOMATIC REMISSION.**—Section
25 234A b.(2) of the Atomic Energy of 1954 (42 U.S.C.
26 2282a(b)(2)) is amended by striking the last sentence.

1 (b) LIMITATION FOR NONPROFIT INSTITUTIONS.—
 2 Section 234A of the Atomic Energy Act of 1954 (42
 3 U.S.C. 2282a) is further amended by striking subsection
 4 d. and inserting the following:

5 “d. Notwithstanding subsection a., no contractor,
 6 subcontractor, or supplier considered to be nonprofit
 7 under the Internal Revenue Code of 1954 shall be subject
 8 to a civil penalty under this section in excess of the
 9 amount of any performance fee paid by the Secretary to
 10 such contractor, subcontractor, or supplier under the con-
 11 tract under which the violation or violations; occur.”.

12 **SEC. 409. EFFECTIVE DATE.**

13 (a) IN GENERAL.—The amendments made by this
 14 Subtitle shall become effective on the date of the enact-
 15 ment of this Subtitle.

16 (b) INDEMNIFICATION PROVISIONS.—The amend-
 17 ments made by sections 703, 704, and 705 shall not apply
 18 to any nuclear incident occurring before the date of the
 19 enactment of this Subtitle.

20 (c) CIVIL PENALTY PROVISIONS.—The amendments
 21 made by section 708 to section 234A of the Atomic En-
 22 ergy Act of 1954 (42 U.S.C. 2282a(b)(2)) shall not apply
 23 to any violation occurring under a contract entered into
 24 before the date of the enactment of this Subtitle.

1 **Subtitle B—Funding From the**
2 **Department of Energy**

3 **SEC. 410. NUCLEAR ENERGY RESEARCH INITIATIVE.**

4 There are authorized to be appropriated \$60,000,000
5 for fiscal year 2002 and such sums as are necessary for
6 each fiscal year thereafter for a Nuclear Energy Research
7 Initiative to be managed by the Director of the Office of
8 Nuclear Energy, for grants to be competitively awarded
9 and subject to peer review for research relating to nuclear
10 energy. The Secretary of Energy shall submit to the Com-
11 mittee on Science and the Committee on Appropriations
12 in the House of Representatives, and to the Committee
13 on Energy and Natural Resources and the Committee on
14 Appropriations of the Senate, an annual report on the ac-
15 tivities of the Nuclear Energy Research Initiative.

16 **SEC. 411. NUCLEAR ENERGY PLANT OPTIMIZATION PRO-**
17 **GRAM.**

18 There are authorized to be appropriated \$10,000,000
19 for fiscal year 2002 and such sums as are necessary for
20 each fiscal year thereafter for a Nuclear Energy Plant Op-
21 timization Program to be managed by the Director of the
22 Office of Nuclear Energy, for a joint program with indus-
23 try cost-shared by at least 50 percent and subject to an-
24 nual review by the Secretary of Energy's Nuclear Energy
25 Research Advisory Council. The Secretary of Energy shall

1 submit to the Committee on Science and the Committee
2 on Appropriations in the House of Representatives, and
3 to the Committee on Energy and Natural Resources and
4 the Committee on Appropriations of the Senate, an annual
5 report on the activities of the Nuclear Energy Plant Opti-
6 mization Program.

7 **SEC. 412. NUCLEAR ENERGY TECHNOLOGY DEVELOPMENT**
8 **PROGRAM.**

9 There are authorized to be appropriated \$25,000,000
10 for fiscal year 2002 and such sums as are necessary for
11 each fiscal year thereafter for a Nuclear Energy Tech-
12 nology Development Program to be managed by the Direc-
13 tor of the Office of Nuclear Energy, for a roadmap to de-
14 sign and develop a new nuclear energy facility in the
15 United States and subject to annual review by the Sec-
16 retary of Energy's Nuclear Energy Research Advisory
17 Council. The Secretary of Energy shall submit to the Com-
18 mittee on Science and the Committee on Appropriations
19 in the House of Representatives, and to the Committee
20 on Energy and Natural Resources and the Committee on
21 Appropriations of the Senate, an annual report on the ac-
22 tivities of the Nuclear Technology Development Program.

1 **Subtitle C—Grants for Incentive**
 2 **Payments for Capital Improve-**
 3 **ments To Increase Efficiency**

4 **SEC. 420. NUCLEAR ENERGY PRODUCTION INCENTIVES.**

5 (a) INCENTIVE PAYMENTS.—For electric energy gen-
 6 erated and sold by an existing nuclear energy facility dur-
 7 ing the incentive period, the Secretary of Energy shall
 8 make, subject to the availability of appropriations, incen-
 9 tive payments to the owner or operator of such facility.
 10 The amount of such payment made to any such owner or
 11 operator shall be as determined under subsection (e) of
 12 this section. Payments under this section may only be
 13 made upon receipt by the Secretary of an incentive pay-
 14 ment application, which establishes that the applicant is
 15 eligible to receive such payment and which satisfies such
 16 other requirements as the Secretary deems necessary.
 17 Such application shall be in such form, and shall be sub-
 18 mitted at such time, as the Secretary shall establish.

19 (b) DEFINITIONS.—For purposes of this section:

20 (1) QUALIFIED NUCLEAR ENERGY FACILITY.—

21 The term “qualified nuclear energy facility” means
 22 an existing reactor used to generate electricity for
 23 sale.

24 (2) EXISTING REACTOR.—The term “existing
 25 reactor” means any nuclear reactor the construction

1 of which was completed and licensed by the Nuclear
2 Regulatory Commission before the date of enactment
3 of this section.

4 (c) INCENTIVE PERIOD.—A qualified nuclear energy
5 facility may receive payments under this section for a pe-
6 riod of 15 years (referred to in this section as the “incen-
7 tive period.”)

8 (d) AMOUNT OF PAYMENT.—(1) Payments made by
9 the Secretary under this section to the owner or operator
10 of a nuclear energy facility shall be based on the increased
11 volume of kilowatt hours of electricity generated by the
12 qualified nuclear energy facility during the incentive pe-
13 riod. The amount of such payment shall be 1 mill for each
14 kilowatt-hour produced in excess of the total generation
15 produced over the most recent calendar year prior to the
16 first fiscal year in which payment is sought. Such payment
17 is subject to the availability of appropriations under sub-
18 section (g), except that no facility may receive more than
19 \$2,000,000 in one calendar year.

20 (2) The amount of the payment made to any person
21 under this section as provided in paragraph (1) shall be
22 adjusted for inflation for each fiscal year beginning after
23 calendar year 2001 in the same manner as provided in
24 the provisions of section 29(d)(2)(B) of the Internal Rev-
25 enue Code of 1986, except that in applying such provi-

1 sions, the calendar year 2001 shall be substituted for the
2 calendar year 1979.

3 (e) SUNSET.—No payment may be made under this
4 section to any nuclear energy facility after the expiration
5 of the period of 20 fiscal years beginning with fiscal year
6 2001, and no payment may be made under this section
7 to any such facility after a payment has been made with
8 respect to such facility for a period of 15 fiscal years.

9 (f) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated to the Secretary to carry
11 out the purposes of this section \$50,000,000 for each of
12 the fiscal years 2001 through 2015.

13 **SEC. 421. NUCLEAR ENERGY EFFICIENCY IMPROVEMENT.**

14 (a) INCENTIVE PAYMENTS.—The Secretary of En-
15 ergy shall make incentive payments to the owners or oper-
16 ators of qualified nuclear energy facilities to be used to
17 make capital improvements in the facilities that are di-
18 rectly related to improving the electrical output efficiency
19 of such facilities by at least 1 percent.

20 (b) LIMITATIONS.—(1) Incentive payments under
21 this section shall not exceed 10 percent of the costs of
22 the capital improvement concerned and not more than one
23 payment may be made with respect to improvements at
24 a single facility.

1 (2) No payment in excess of \$1,000,000 may be made
2 with respect to improvements at a single facility.

3 (3) Payments may be made by the Department or
4 used by a facility to offset the costs of NRC permitting
5 fees for a capital improvement.

6 (4) Payments made by the Department to the Nu-
7 clear Regulatory Commission for permitting an improve-
8 ment that can impact multiple facilities are not subject
9 to the limitation in (b)(2).

10 (c) AUTHORIZATION.—There is authorized to be ap-
11 propriated to carry out this section not more than
12 \$20,000,000 in each fiscal year after the fiscal year 2001.

13 **TITLE V—ARCTIC COASTAL**
14 **PLAIN DOMESTIC ENERGY SE-**
15 **CURITY ACT OF 2001**

16 **SEC. 501. SHORT TITLE.**

17 This title may be cited as the “Arctic Coastal Plain
18 Domestic Energy Security Act of 2001”.

19 **SEC. 502. DEFINITIONS.**

20 When used in this title the term—

21 (1) “1002 Area” means that area identified as
22 “Coastal Plain” in the map entitled “Arctic National
23 Wildlife Refuge”, dated August 1980, as referenced
24 in section 1002(b) of the Alaska National Interest
25 Lands Conservation Act of 1980 (16 U.S.C.

1 3142(b)(1)) comprising approximately 1,549,000
2 acres; and

3 (2) “Secretary”, except as otherwise provided,
4 means the Secretary of the Interior or the Sec-
5 retary’s designee.

6 **SEC. 503. LEASING PROGRAM FOR LANDS WITHIN THE**
7 **ANWR 1002 AREA.**

8 (a) AUTHORIZATION.—The Congress hereby author-
9 izes and directs the Secretary, acting through the Bureau
10 of Land Management in consultation with the Fish and
11 Wildlife Service and other appropriate Federal offices and
12 agencies, to take such actions as are necessary to establish
13 and implement a competitive oil and gas leasing program
14 that will result in an environmentally sound program for
15 the exploration, development, and production of the oil
16 and gas resources of the 1002 Area and to administer the
17 provisions of this title through regulations, lease terms,
18 conditions, restrictions, prohibitions, stipulations and
19 other provisions that ensure the oil and gas exploration,
20 development, and production activities on the 1002 Area
21 will result in no significant adverse effect on fish and wild-
22 life, their habitat, subsistence resources, and the environ-
23 ment, and shall require the application of the best com-
24 mercially available technology for oil and gas exploration,
25 development, and production, on all new exploration, de-

1 velopment, and production operations, and whenever prac-
2 ticable, on existing operations, and in a manner to ensure
3 the receipt of fair market value by the public for the min-
4 eral resources to be leased.

5 (b) REPEAL.—The prohibitions and limitations con-
6 tained in section 1003 of the Alaska National Interest
7 Lands Conservation Act of 1980 (16 U.S.C. 3143) are
8 hereby repealed.

9 (c) COMPATIBILITY.—Congress hereby determines
10 that the oil and gas leasing program and activities author-
11 ized by this section in the 1002 Area are compatible with
12 the purposes for which the Arctic National Wildlife Refuge
13 was established, and that no further findings or decisions
14 are required to implement this determination.

15 (d) SOLE AUTHORITY.—This title shall be the sole
16 authority for leasing on the 1002 Area: *Provided*, That
17 nothing in this title shall be deemed to expand or limit
18 State and local regulatory authority.

19 (e) FEDERAL LAND.—The 1002 Area shall be consid-
20 ered “Federal land” for the purposes of the Federal Oil
21 and Gas Royalty Management Act of 1982.

22 (f) SPECIAL AREAS.—The Secretary, after consulta-
23 tion with the State of Alaska, City of Kaktovik, and the
24 North Slope Borough, is authorized to designate up to a
25 total of 45,000 acres of the 1002 Area as Special Areas

1 and close such areas to leasing if the Secretary determines
2 that these Special Areas are of such unique character and
3 interest so as to require special management and regu-
4 latory protection. The Secretary may, however, permit
5 leasing of all or portions of any Special Areas within the
6 1002 Area by setting lease terms that limit or condition
7 surface use and occupancy by lessees of such lands but
8 permit the use of horizontal drilling technology from sites
9 on leases located outside the designated Special Areas.

10 (g) LIMITATION ON CLOSED AREAS.—The Sec-
11 retary's sole authority to close lands within the 1002 Area
12 to oil and gas leasing and to exploration, development, and
13 production is that set forth in this title.

14 (h) CONVEYANCE.—In order to maximize Federal
15 revenues by removing clouds on title of lands and clari-
16 fying land ownership patterns within the 1002 Area, the
17 Secretary, notwithstanding the provisions of section
18 1302(h)(2) of the Alaska National Interest Lands Con-
19 servation Act (16 U.S.C. 3192(h)(2)), is authorized and
20 directed to convey (1) to the Kaktovik Inupiat Corporation
21 the surface estate of the lands described in paragraph 2
22 of Public Land Order 6959, to the extent necessary to
23 fulfill the Corporation's entitlement under section 12 of
24 the Alaska Native Claims Settlement Act (43 U.S.C.
25 1611), and (2) to the Arctic Slope Regional Corporation

1 the subsurface estate beneath such surface estate pursu-
2 ant to the August 9, 1983, agreement between the Arctic
3 Slope Regional Corporation and the United States of
4 America.

5 **SEC. 504. RULES AND REGULATIONS.**

6 (a) PROMULGATION.—The Secretary shall prescribe
7 such rules and regulations as may be necessary to carry
8 out the purposes and provisions of this title, including
9 rules and regulations relating to protection of the fish and
10 wildlife, their habitat, subsistence resources, and the envi-
11 ronment of the 1002 Area. Such rules and regulations
12 shall be promulgated no later than fourteen months after
13 the date of enactment of this title and shall, as of their
14 effective date, apply to all operations conducted under a
15 lease issued or maintained under the provisions of this
16 title and all operations on the 1002 Area related to the
17 leasing, exploration, development and production of oil
18 and gas.

19 (b) REVISION OF REGULATIONS.—The Secretary
20 shall periodically review and, if appropriate, revise the
21 rules and regulations issued under subsection (a) of this
22 section to reflect any significant biological, environmental,
23 or engineering data which come to the Secretary's atten-
24 tion.

1 **SEC. 505. ADEQUACY OF THE DEPARTMENT OF THE INTE-**
2 **RIOR'S LEGISLATIVE ENVIRONMENTAL IM-**
3 **PACT STATEMENT.**

4 The "Final Legislative Environmental Impact State-
5 ment" (April 1987) prepared pursuant to section 1002 of
6 the Alaska National Interest Lands Conservation Act of
7 1980 (16 U.S.C. 3142) and section 102(2)(C) of the Na-
8 tional Environmental Policy Act of 1969 (42 U.S.C.
9 4332(2)(C)) is hereby found by the Congress to be ade-
10 quate to satisfy the legal and procedural requirements of
11 the National Environmental Policy Act of 1969 with re-
12 spect to actions authorized to be taken by the Secretary
13 to develop and promulgate the regulations for the estab-
14 lishment of the leasing program authorized by this title,
15 to conduct the first lease sale and any subsequent lease
16 sale authorized by this title, and to grant rights-of-way
17 and easements to carry out the purposes of this title.

18 **SEC. 506. LEASE SALES.**

19 (a) LEASE SALES.—Lands may be leased pursuant
20 to the provisions of this title to any person qualified to
21 obtain a lease for deposits of oil and gas under the Mineral
22 Leasing Act, as amended (30 U.S.C. 181).

23 (b) PROCEDURES.—The Secretary shall, by regula-
24 tion, establish procedures for—

25 (1) receipt and consideration of sealed nomina-
26 tions for any area in the 1002 Area for inclusion in,

1 or exclusion (as provided in subsection (c)) from, a
2 lease sale; and

3 (2) public notice of and comment on designa-
4 tion of areas to be included in, or excluded from, a
5 lease sale.

6 (c) LEASE SALES ON 1002 AREA.—The Secretary
7 shall, by regulation, provide for lease sales of lands on the
8 1002 Area. When lease sales are to be held, they shall
9 occur after the nomination process provided for in sub-
10 section (b) of this section. For the first lease sale, the Sec-
11 retary shall offer for lease those acres receiving the great-
12 est number of nominations, but no less than 200,000 acres
13 and no more than 300,000 acres shall be offered. If the
14 total acreage nominated is less than 200,000 acres, the
15 Secretary shall include in such sale any other acreage
16 which he believes has the highest resource potential, but
17 in no event shall more than 300,000 acres be offered in
18 such sale. With respect to subsequent lease sales, the Sec-
19 retary shall offer for lease no less than 200,000 acres of
20 the 1002 Area. The initial lease sale shall be held within
21 20 months of the date of enactment of this title. The sec-
22 ond lease sale shall be held no later than 24 months after
23 the initial sale, with additional sales conducted no later
24 than 12 months thereafter so long as sufficient interest

1 in development exists to warrant, in the Secretary's judg-
2 ment, the conduct of such sales.

3 **SEC. 507. GRANT OF LEASES BY THE SECRETARY.**

4 (a) IN GENERAL.—The Secretary is authorized to
5 grant to the highest responsible qualified bidder by sealed
6 competitive cash bonus bid any lands to be leased on the
7 1002 Area upon payment by the lessee of such bonus as
8 may be accepted by the Secretary and of such royalty as
9 may be fixed in the lease, which shall be not less than
10 12½ per centum in amount or value of the production
11 removed or sold from the lease.

12 (b) ANTITRUST REVIEW.—Following each notice of
13 a proposed lease sale and before the acceptance of bids
14 and the issuance of leases based on such bids, the Sec-
15 retary shall allow the Attorney General, in consultation
16 with the Federal Trade Commission, thirty days to per-
17 form an antitrust review of the results of such lease sale
18 on the likely effects the issuance of such leases would have
19 on competition and the Attorney General shall advise the
20 Secretary with respect to such review, including any rec-
21 ommendation for the nonacceptance of any bid or the im-
22 position of terms or conditions on any lease, as may be
23 appropriate to prevent any situation inconsistent with the
24 antitrust laws.

1 (c) SUBSEQUENT TRANSFERS.—No lease issued
 2 under this title may be sold, exchanged, assigned, sublet,
 3 or otherwise transferred except with the approval of the
 4 Secretary. Prior to any such approval the Secretary shall
 5 consult with, and give due consideration to the views of,
 6 the Attorney General.

7 (d) IMMUNITY.—Nothing in this title shall be deemed
 8 to convey to any person, association, corporation, or other
 9 business organization immunity from civil or criminal li-
 10 ability, or to create defenses to actions, under any anti-
 11 trust law.

12 (e) DEFINITIONS.—As used in this section, the
 13 term—

14 (1) “antitrust review” shall be deemed an
 15 “antitrust investigation” for the purposes of the
 16 Antitrust Civil Process Act (15 U.S.C. 1311); and

17 (2) “antitrust laws” means those Acts set forth
 18 in section 1 of the Clayton Act (15 U.S.C. 12) as
 19 amended.

20 **SEC. 508. LEASE TERMS AND CONDITIONS.**

21 An oil or gas lease issued pursuant to this title
 22 shall—

23 (1) be for a tract consisting of a compact area
 24 not to exceed 5,760 acres, or nine surveyed or pro-

1 tracted sections which shall be as compact in form
2 as possible;

3 (2) be for an initial period of ten years and
4 shall be extended for so long thereafter as oil or gas
5 is produced in paying quantities from the lease or
6 unit area to which the lease is committed or for so
7 long as drilling or reworking operations, as approved
8 by the Secretary, are conducted on the lease or unit
9 area;

10 (3) require the payment of royalty as provided
11 for in section 507 of this title;

12 (4) require that exploration activities pursuant
13 to any lease issued or maintained under this title
14 shall be conducted in accordance with an exploration
15 plan or a revision of such plan approved by the Sec-
16 retary;

17 (5) require that all development and production
18 pursuant to a lease issued or maintained pursuant
19 to this title shall be conducted in accordance with
20 development and production plans approved by the
21 Secretary;

22 (6) require posting of bond as required by sec-
23 tion 509 of this title;

24 (7) provide that the Secretary may close, on a
25 seasonal basis, portions of the 1002 Area to explor-

1 atory drilling activities as necessary to protect car-
2 ibou calving areas and other species of fish and wild-
3 life;

4 (8) contain such provisions relating to rental
5 and other fees as the Secretary may prescribe at the
6 time of offering the area for lease;

7 (9) provide that the Secretary may direct or as-
8 sent to the suspension of operations and production
9 under any lease granted under the terms of this title
10 in the interest of conservation of the resource or
11 where there is no available system to transport the
12 resource. If such a suspension is directed or as-
13 sented to by the Secretary, any payment of rental
14 prescribed by such lease shall be suspended during
15 such period of suspension of operations and produc-
16 tion, and the term of the lease shall be extended by
17 adding any such suspension period thereto;

18 (10) provide that whenever the owner of a non-
19 producing lease fails to comply with any of the pro-
20 visions of this Act, or of any applicable provision of
21 Federal or State environmental law, or of the lease,
22 or of any regulation issued under this title, such
23 lease may be canceled by the Secretary if such de-
24 fault continues for more than thirty days after mail-

1 ing of notice by registered letter to the lease owner
2 at the lease owner's post office address of record;

3 (11) provide that whenever the owner of any
4 producing lease fails to comply with any of the pro-
5 visions of this title, or of any applicable provision of
6 Federal or State environmental law, or of the lease,
7 or of any regulation issued under this title, such
8 lease may be forfeited and canceled by any appro-
9 priate proceeding brought by the Secretary in any
10 United States district court having jurisdiction
11 under the provisions of this title;

12 (12) provide that cancellation of a lease under
13 this title shall in no way release the owner of the
14 lease from the obligation to provide for reclamation
15 of the lease site;

16 (13) allow the lessee, at the discretion of the
17 Secretary, to make written relinquishment of all
18 rights under any lease issued pursuant to this title.
19 The Secretary shall accept such relinquishment by
20 the lessee of any lease issued under this title where
21 there has not been surface disturbance on the lands
22 covered by the lease;

23 (14) provide that for the purpose of conserving
24 the natural resources of any oil or gas pool, field, or
25 like area, or any part thereof, and in order to avoid

1 the unnecessary duplication of facilities, to protect
2 the environment of the 1002 Area, and to protect
3 correlative rights, the Secretary shall require that, to
4 the greatest extent practicable, lessees unite with
5 each other in collectively adopting and operating
6 under a cooperative or unit plan of development for
7 operation of such pool, field, or like area, or any
8 part thereof, and the Secretary is also authorized
9 and directed to enter into such agreements as are
10 necessary or appropriate for the protection of the
11 United States against drainage;

12 (15) require that the holder of a lease or lands
13 within the 1002 Area shall be fully responsible and
14 liable for the reclamation of those lands within and
15 any other Federal lands adversely affected in con-
16 nection with exploration, development, production or
17 transportation activities on a lease within the 1002
18 Area by the holder of a lease or as a result of activi-
19 ties conducted on the lease by any of the lease-
20 holder's subcontractors or agents;

21 (16) provide that the holder of a lease may not
22 delegate or convey, by contract or otherwise, the rec-
23 lamation responsibility and liability to another party
24 without the express written approval of the Sec-
25 retary;

1 (17) provide that the standard of reclamation
2 for lands required to be reclaimed under this title
3 be, as nearly as practicable, a condition capable of
4 supporting the uses which the lands were capable of
5 supporting prior to any exploration, development, or
6 production activities, or upon application by the les-
7 see, to a higher or better use as approved by the
8 Secretary;

9 (18) contain the terms and conditions relating
10 to protection of fish and wildlife, their habitat, and
11 the environment, as required by section 503(a) of
12 this title;

13 (19) provide that the holder of a lease, its
14 agents, and contractors use best efforts to provide a
15 fair share, as determined by the level of obligation
16 previously agreed to in the 1974 agreement imple-
17 menting Section 29 of the Federal Agreement and
18 Grant of Right of Way for the Operation of the
19 Trans-Alaska Pipeline, of employment and con-
20 tracting for Alaska Natives and Alaska Native Cor-
21 porations from throughout the State;

22 (20) require project agreements to the extent
23 feasible that will ensure productivity and consistency
24 recognizing a national interest in both labor stability
25 and the ability of construction labor and manage-

1 ment to meet the particular needs and conditions of
2 projects to be developed under leases issued pursu-
3 ant to this Act; and

4 (21) contain such other provisions as the Sec-
5 retary determines necessary to ensure compliance
6 with the provisions of this title and the regulations
7 issued under this title.

8 **SEC. 509. BONDING REQUIREMENTS TO ENSURE FINANCIAL**
9 **RESPONSIBILITY OF LESSEE AND AVOID FED-**
10 **ERAL LIABILITY.**

11 (a) REQUIREMENT.—The Secretary shall, by rule or
12 regulation, establish such standards as may be necessary
13 to ensure that an adequate bond, surety, or other financial
14 arrangement will be established prior to the commence-
15 ment of surface disturbing activities on any lease, to en-
16 sure the complete and timely reclamation of the lease
17 tract, and the restoration of any lands or surface waters
18 adversely affected by lease operations after the abandon-
19 ment or cessation of oil and gas operations on the lease.
20 Such bond, surety, or financial arrangement is in addition
21 to, and not in lieu, of any bond, surety, or financial ar-
22 rangement required by any other regulatory authority or
23 required by any other provision of law.

24 (b) AMOUNT.—The bond, surety, or financial ar-
25 rangement shall be in an amount—

1 (1) to be determined by the Secretary to pro-
2 vide for reclamation of the lease site in accordance
3 with an approved or revised exploration or develop-
4 ment and production plan; plus

5 (2) set by the Secretary consistent with the
6 type of operations proposed, to provide the means
7 for rapid and effective cleanup, and to minimize
8 damages resulting from an oil spill, the escape of
9 gas, refuse, domestic wastewater, hazardous or toxic
10 substances, or fire caused by oil and gas activities.

11 (c) ADJUSTMENT.—In the event that an approved ex-
12 ploration or development and production plan is revised,
13 the Secretary may adjust the amount of the bond, surety,
14 or other financial arrangement to conform to such modi-
15 fied plan.

16 (d) DURATION.—The responsibility and liability of
17 the lessee and its surety under the bond, surety, or other
18 financial arrangement shall continue until such time as
19 the Secretary determines that there has been compliance
20 with the terms and conditions of the lease and all applica-
21 ble law.

22 (e) TERMINATION.—Within sixty days after deter-
23 mining that there has been compliance with the terms and
24 conditions of the lease and all applicable laws, the Sec-
25 retary, after consultation with affected Federal and State

1 agencies, shall notify the lessee that the period of liability
2 under the bond, surety, or other financial arrangement has
3 been terminated.

4 **SEC. 510. OIL AND GAS INFORMATION.**

5 (a) IN GENERAL.—(1) Any lessee or permittee con-
6 ducting any exploration for, or development or production
7 of, oil or gas pursuant to this title shall provide the Sec-
8 retary access to all data and information from any lease
9 granted pursuant to this title (including processed and
10 analyzed) obtained from such activity and shall provide
11 copies of such data and information as the Secretary may
12 request. Such data and information shall be provided in
13 accordance with regulations which the Secretary shall pre-
14 scribe.

15 (2) If processed and analyzed information provided
16 pursuant to paragraph (1) is provided in good faith by
17 the lessee or permittee, such lessee or permittee shall not
18 be responsible for any consequence of the use or of reliance
19 upon such processed and analyzed information.

20 (3) Whenever any data or information is provided to
21 the Secretary, pursuant to paragraph (1)—

22 (A) by a lessee or permittee, in the form and
23 manner of processing which is utilized by such lessee
24 or permittee in the normal conduct of business, the

1 Secretary shall pay the reasonable cost of reproduc-
2 ing such data and information; or

3 (B) by a lessee or permittee, in such other form
4 and manner of processing as the Secretary may re-
5 quest, the Secretary shall pay the reasonable cost of
6 processing and reproducing such data and informa-
7 tion.

8 (b) REGULATIONS.—The Secretary shall prescribe
9 regulations to—

10 (1) assure that the confidentiality of privileged
11 or proprietary information received by the Secretary
12 under this section will be maintained; and

13 (2) set forth the time periods and conditions
14 which shall be applicable to the release of such infor-
15 mation.

16 **SEC. 511. EXPEDITED JUDICIAL REVIEW.**

17 (a) Any complaint seeking judicial review of any pro-
18 vision in this title, or any other action of the Secretary
19 under this title may be filed in any appropriate district
20 court of the United States, and such complaint must be
21 filed within ninety days from the date of the action being
22 challenged, or after such date if such complaint is based
23 solely on grounds arising after such ninetieth day, in
24 which case the complaint must be filed within ninety days
25 after the complainant knew or reasonably should have

1 known of the grounds for the complaint: *Provided*, That
2 any complaint seeking judicial review of an action of the
3 Secretary in promulgating any regulation under this title
4 may be filed only in the United States Court of Appeals
5 for the District of Columbia.

6 (b) Actions of the Secretary with respect to which re-
7 view could have been obtained under this section shall not
8 be subject to judicial review in any civil or criminal pro-
9 ceeding for enforcement.

10 **SEC. 512. RIGHTS-OF-WAY ACROSS THE 1002 AREA.**

11 Notwithstanding Title XI of the Alaska National In-
12 terest Lands Conservation Act of 1980 (16 U.S.C. 3161
13 et seq.), the Secretary is authorized and directed to grant,
14 in accordance with the provisions of sections 28(c) through
15 (t) and (v) through (y) of the Mineral Leasing Act of 1920
16 (30 U.S.C. 185), rights-of-way and easements across the
17 1002 Area for the transportation of oil and gas under such
18 terms and conditions as may be necessary so as not to
19 result in a significant adverse effect on the fish and wild-
20 life, subsistence resources, their habitat, and the environ-
21 ment of the 1002 Area. Such terms and conditions shall
22 include requirements that facilities be sited or modified
23 so as to avoid unnecessary duplication of roads and pipe-
24 lines. The regulations issued as required by section 504

1 of this title shall include provisions granting rights-of-way
 2 and easements across the 1002 Area.

3 **SEC. 513. ENFORCEMENT OF SAFETY AND ENVIRON-**
 4 **MENTAL REGULATIONS TO ENSURE COMPLI-**
 5 **ANCE WITH TERMS AND CONDITIONS OF**
 6 **LEASE.**

7 (a) RESPONSIBILITY OF THE SECRETARY.—The Sec-
 8 retary shall diligently enforce all regulations, lease terms,
 9 conditions, restrictions, prohibitions, and stipulations pro-
 10 mulgated pursuant to this title.

11 (b) RESPONSIBILITY OF HOLDERS OF LEASE.—It
 12 shall be the responsibility of any holder of a lease under
 13 this title to—

14 (1) maintain all operations within such lease
 15 area in compliance with regulations intended to pro-
 16 tect persons and property on, and fish and wildlife,
 17 their habitat, subsistence resources, and the environ-
 18 ment of, the 1002 Area; and

19 (2) allow prompt access at the site of any oper-
 20 ations subject to regulation under this title to any
 21 appropriate Federal or State inspector, and to pro-
 22 vide such documents and records which are pertinent
 23 to occupational or public health, safety, or environ-
 24 mental protection, as may be requested.

1 (c) ON-SITE INSPECTION.—The Secretary shall pro-
 2 mulgate regulations to provide for—

- 3 (1) scheduled onsite inspection by the Sec-
 4 retary, at least twice a year, of each facility on the
 5 1002 Area which is subject to any environmental or
 6 safety regulation promulgated pursuant to this title
 7 or conditions contained in any lease issued pursuant
 8 to this title to assure compliance with such environ-
 9 mental or safety regulations or conditions; and
- 10 (2) periodic onsite inspection by the Secretary
 11 at least once a year without advance notice to the
 12 operator of such facility to assure compliance with
 13 all environmental or safety regulations.

14 **SEC. 514. NEW REVENUES.**

15 (a) DEPOSIT INTO TREASURY.—Notwithstanding
 16 any other provision of law, all revenues received by the
 17 Federal Government from competitive bids, sales, bonuses,
 18 royalties, rents, fees, or interest derived from the leasing
 19 of oil and gas within the 1002 Area shall be deposited
 20 into the Treasury of the United States, solely as provided
 21 in this section. The Secretary of the Treasury shall pay
 22 to the State of Alaska the same percentage of such reve-
 23 nues as is set forth under the heading “EXPLORATION
 24 OF NATIONAL PETROLEUM RESERVE IN ALAS-
 25 KA” in Public Law 96–514 (94 Stat. 2957, 2964) semi-

1 annually to the State of Alaska, on March 30 and Sep-
2 tember 30 of each year and shall deposit the balance of
3 all such revenues as miscellaneous receipts in the Treas-
4 ury. Notwithstanding any other provision of law, the Sec-
5 retary of the Treasury shall monitor the total revenue de-
6 posited into the Treasury as miscellaneous receipts from
7 oil and gas leases issued under the authority of this sub-
8 title and shall deposit amounts received as bonus bids into
9 a special fund established in the Treasury of the United
10 States known as the Renewable Energy Research and De-
11 velopment Fund (in this section referred to as the “Re-
12 newable Energy Fund”).

13 (b) USE OF RENEWABLE ENERGY FUND.—Of the
14 amounts in the Renewable Energy Fund, an amount equal
15 to ten percent of the total deposits shall be made available
16 to the Secretary of Energy, without further appropriation,
17 at the beginning of each fiscal year in which amounts are
18 available, and may be expended by the Secretary of En-
19 ergy for research and development of renewable domestic
20 energy resources of wind, solar, biomass, geothermal and
21 hydroelectric. Such amounts shall remain available until
22 expended and shall be in addition to funds appropriated
23 in the preceding fiscal year to the Secretary of Energy
24 for renewable energy research, development and dem-
25 onstration programs authorized by section 103 of the En-

1 ergy Reorganization Act of 1974 (42 U.S.C. 5813). The
 2 Secretary of Energy shall develop procedures for the use
 3 of the Renewable Energy Fund that ensure accountability
 4 and demonstrated results. Beginning the first full fiscal
 5 year after deposits are made into the Renewable Energy
 6 Fund, the Secretary of Energy shall submit an annual re-
 7 port to the Committee on Energy and Natural Resources
 8 of the United States Senate and the appropriate commit-
 9 tees of the United States House of Representatives detail-
 10 ing the use of any expenditures.

11 **TITLE VI—ENERGY EFFICIENCY,**
 12 **CONSERVATION, AND ASSIST-**
 13 **ANCE TO LOW-INCOME FAMI-**
 14 **LIES**

15 **SEC. 601. EXTENSION OF LOW INCOME HOME ENERGY AS-**
 16 **SISTANCE PROGRAM.**

17 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
 18 2602(b) of the Omnibus Budget Reconciliation Act of
 19 1981 (42 U.S.C. 8621), is amended by striking “such
 20 sums as may be necessary for each of fiscal years 2000
 21 and 2001, and \$2,000,000,000 for each of fiscal years
 22 2002 through 2004” and inserting “\$3,000,000,000 for
 23 each of fiscal years 2000 through 2010”.

24 (b) PAYMENTS TO STATES.—Section 2602(d)(2) of
 25 the Omnibus Budget Reconciliation Act of 1981 (42

1 U.S.C. 8621) is amended by striking “2004” and insert-
 2 ing “2010”.

3 (c) EMERGENCY FUNDS.—Section 2602(e) of the
 4 Omnibus Budget Reconciliation Act of 1981 (42 U.S.C.
 5 8621), is amended by striking “\$600,000,000” and insert-
 6 ing “\$1,000,000,000”.

7 **SEC. 602. ENERGY EFFICIENT SCHOOLS PROGRAM.**

8 (a) ESTABLISHMENT.—There is established in the
 9 Department of Energy the Energy Efficient Schools Pro-
 10 gram (hereafter in this section referred to as the “Pro-
 11 gram”).

12 (b) IN GENERAL.—The Secretary of Energy may,
 13 through the Program, make grants to—

14 (1) be provided to school districts to implement
 15 the purpose of this section;

16 (2) administer the program of assistance to
 17 school districts pursuant to this section; and

18 (3) promote participation by school districts in
 19 the program established by this section.

20 (c) GRANTS TO ASSIST SCHOOL DISTRICTS.—Grants
 21 under paragraph (b)(1) shall be used to achieve energy
 22 efficiency performance not less than 30 percent beyond the
 23 levels prescribed in the 1998 International Energy Con-
 24 servation Code as it is in effect for new construction and

1 existing buildings. Grants under such subsection shall be
2 made to school districts that have—

3 (1) demonstrated a need for such grants in
4 order to respond appropriately to increasing elemen-
5 tary and secondary school enrollments or to make
6 major investments in renovation of school facilities;

7 (2) demonstrated that the districts do not have
8 adequate funds to respond appropriately to such en-
9 rollments or achieve such investments without assist-
10 ance; and

11 (3) made a commitment to use the grant funds
12 to develop energy efficient school buildings in ac-
13 cordance with the plan developed and approved pur-
14 suant to paragraph (e)(1).

15 (d) OTHER GRANTS.—

16 (1) GRANTS FOR ADMINISTRATION.—Grants
17 under paragraph (b)(2) shall be used to evaluate
18 compliance by school districts with the requirements
19 of this section and in addition may be used for—

20 (A) distributing information and materials
21 to clearly define and promote the development
22 of energy efficient school buildings for both new
23 and existing facilities;

24 (B) organizing and conducting programs
25 for school board members, school district per-

1 sonnel, architects, engineers, and others to ad-
2 vance the concepts of energy efficient school
3 buildings;

4 (C) obtaining technical services and assist-
5 ance in planning and designing energy efficient
6 school buildings; and

7 (D) collecting and monitoring data and in-
8 formation pertaining to the energy efficient
9 school building projects.

10 (2) GRANTS TO PROMOTE PARTICIPATION.—

11 Grants under paragraph (b)(3) may be used for pro-
12 motional and marketing activities, including facili-
13 tating private and public financing, promoting the
14 use of energy service companies, working with school
15 administrations, students, and communities, and co-
16 ordinating public benefit programs.

17 (e) IMPLEMENTATION.—

18 (1) PLANS.—Grants under subsection (b) shall
19 be provided only to school districts that, in consulta-
20 tion with State offices of energy and education, have
21 developed plans that the State energy office deter-
22 mines to be feasible and appropriate in order to
23 achieve the purposes for which such grants were
24 made.

1 (2) SUPPLEMENTING GRANT FUNDS.—The
2 State agency referred to in paragraph (1) shall en-
3 courage qualifying school districts to supplement
4 their grant funds with funds from other sources in
5 the implementation of their plans.

6 (f) ALLOCATION OF FUNDS.—

7 (1) IN GENERAL.—Except as provided in sub-
8 section (c), funds appropriated for the implementa-
9 tion of this section shall be provided to State energy
10 offices to administer the program of assistance to
11 school districts under this section.

12 (g) PURPOSES.—Except as provided in subsection
13 (c), funds appropriated under this section shall be allo-
14 cated as follows:

15 (1) Seventy percent shall be used to make
16 grants under paragraph (b)(1).

17 (2) Fifteen percent shall be used to make
18 grants under paragraph (b)(2).

19 (3) Fifteen percent shall be used to make
20 grants under paragraph (b)(3).

21 (h) OTHER FUNDS.—The Secretary of Energy may,
22 through the Program established under subsection (a), re-
23 tain an amount, not to exceed \$300,000 per year, to assist
24 State energy offices in coordinating and implementing
25 such Program. Such funds may be used to develop ref-

1 erence materials to further define the principles and cri-
2 teria to achieve energy efficient school buildings.

3 (i) AUTHORIZATION OF APPROPRIATIONS.—For this
4 section, there are authorized to be appropriated
5 \$200,000,000 for each of fiscal years 2002 through 2005,
6 and such sums as may be necessary for each of fiscal years
7 2006 through 2011.

8 (j) DEFINITIONS.—

9 (1) ELEMENTARY AND SECONDARY SCHOOL.—

10 The terms “elementary school” and “secondary
11 school” shall have the same meaning given such
12 terms in paragraphs (14) and (25) of section 14101
13 of the Elementary and Secondary Education Act of
14 1965 (20 U.S.C. 8801(14), (25)).

15 (2) ENERGY EFFICIENT SCHOOL BUILDING.—

16 The term “energy efficient school building” refers to
17 a school building which, in its design, construction,
18 operation, and maintenance maximizes use of renew-
19 able energy and efficient energy practices, is cost-ef-
20 fective on a life-cycle basis, uses affordable, environ-
21 mentally preferable, durable materials, enhances in-
22 door environmental quality, protects and conserves
23 water, and optimizes site potential.

1 (3) RENEWABLE ENERGY.—The term “renew-
 2 able energy” means energy produced by solar, wind,
 3 geothermal, hydroelectric power, and biomass power.

4 **SEC. 603. AMENDMENTS TO WEATHERIZATION ASSISTANCE**
 5 **PROGRAM.**

6 (a) ELIGIBILITY.—Section 412 of the Energy Con-
 7 servation and Production Act (42 U.S.C. 6862) is amend-
 8 ed by—

9 (1) in definition (7)(A), striking “125” and in-
 10 serting “150”, and

11 (2) in definition (7)(C), striking “125” and in-
 12 serting “150”.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
 14 422(a) of the Energy Conservation and Production Act
 15 (42 U.S.C. 6872) is amended by—

16 (1) striking “\$200,000,000” and inserting
 17 “\$250,000,000”;

18 (2) striking “1991” and inserting “2002,
 19 \$325,000,000 for fiscal year 2003, \$400,000,000 for
 20 fiscal year 2004, \$500,000,000 for fiscal year
 21 2005”; and

22 (3) striking “1992, 1993 and 1994” and insert-
 23 ing “for each fiscal year thereafter”.

1 **SEC. 604. AMENDMENTS TO STATE ENERGY PROGRAM.**

2 (a) STATE ENERGY CONSERVATION PLANS.—Section
3 362 of the Energy Policy and Conservation Act (42 U.S.C.
4 6322) is amended by—

5 (1) redesignating subsection (f) as subsection
6 (g), and

7 (2) inserting after subsection (e) the following
8 new subsection (f)—

9 “(f) The Secretary shall, at least once every three
10 years, invite the Governor of each State to review and,
11 if necessary, revise the energy conservation plan of such
12 State submitted under section 362 (b) or (e). Such reviews
13 should consider the energy conservation plans of other
14 States within the region, and identify opportunities and
15 actions carried out in pursuit of common energy conserva-
16 tion goals.”.

17 (b) STATE ENERGY EFFICIENCY GOALS.—Section
18 364 of the Energy Policy and Conservation Act (42 U.S.C.
19 6324) is amended by—

20 (1) striking “October 1, 1991” and inserting
21 “January 1, 2001”,

22 (2) striking “10” and inserting “25”, and

23 (3) striking “2000” and inserting “2010”.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
25 365(f)(1) of the Energy Policy and Conservation Act (42
26 U.S.C. 6325) is amended by—

1 (1) striking “and”,

2 (2) striking the period and inserting “,
3 \$75,000,000 for fiscal year 2002, \$100,000,000 for
4 fiscal years 2003 and 2004, \$125,000,000 for fiscal
5 year 2005 and such sums as are necessary for each
6 fiscal year thereafter.”.

7 **SEC. 605. ENHANCEMENT AND EXTENSION OF AUTHORITY**
8 **RELATING TO FEDERAL ENERGY SAVINGS**
9 **PERFORMANCE CONTRACTS.**

10 (a) ENERGY SAVINGS THROUGH CONSTRUCTION OF
11 REPLACEMENT FACILITIES.—Section 804 of the National
12 Energy Conservation Policy Act (42 U.S.C. 8287c) is
13 amended—

14 (1) in paragraph (2)—

15 (A) by redesignating subparagraphs (A)
16 and (B) as clauses (i) and (ii), respectively;

17 (B) by inserting “(A)” after “(2)”; and

18 (C) by adding at the end the following new
19 subparagraph:

20 “(B) The term ‘energy savings’ also means
21 a reduction in the cost of energy, from such a
22 base cost established through a methodology set
23 forth in the contract, that would otherwise be
24 utilized in one or more existing federally owned
25 buildings or other federally owned facilities by

1 reason of the construction and operation of one
2 or more new buildings or facilities.”; and

3 (2) in paragraph (3), by inserting after the first
4 sentence the following new sentence: “The terms
5 also means a contract that provides for energy sav-
6 ings through the construction and/or operation of
7 one or more new buildings or facilities.”.

8 (b) COST SAVINGS FROM OPERATION AND MAINTENANCE
9 EFFICIENCIES IN REPLACEMENT FACILITIES.—
10 Section 801(a) of the National Energy Conservation Pol-
11 icy Act (42 U.S.C. 8287(a)) is amended by adding at the
12 end of the following new paragraph:

13 “(3)(A) in the case of an energy savings con-
14 tract or energy savings performance contract pro-
15 viding for energy savings through the construction
16 and operation of one or more buildings or facilities
17 to replace one or more existing buildings or facilities,
18 benefits ancillary to the purpose of such contract
19 under paragraph (1) may include savings resulting
20 from reduced costs of operation and maintenance at
21 new and/or additional buildings or facilities, from a
22 base cost of operation and maintenance established
23 through a methodology set forth in the contract.

24 “(B) Notwithstanding paragraph (2)(B), aggre-
25 gate annual payments by an agency under an energy

1 savings contract or energy savings performance con-
2 tract referred to in subparagraph (A) may take into
3 account (through the procedures developed pursuant
4 to this section) savings resulting from reduced costs
5 of operation and maintenance as described in that
6 subparagraph.”.

7 (c) FIVE-YEAR EXTENSION OF AUTHORITY.—Section
8 801(c) of the National Energy Conservation Policy Act
9 (42 U.S.C. 8287(c)) is amended by striking “October 1,
10 2003” and inserting “October 1, 2008”.

11 (d) UTILITY INCENTIVE PROGRAMS.—Section 546 of
12 the National Energy Conservation Policy Act (42 U.S.C.
13 8256(c)) is amended by—

14 (1) in paragraph (3) by adding at the end the
15 following two new sentences: “Such a utility incen-
16 tive program may include a contract or contract
17 term designed to provide for cost-effective electricity
18 demand management, energy efficiency, and/or
19 water conservation. Notwithstanding section
20 201(a)(3) of 63 Stat. 383 (40 U.S.C. 481(a)(3)),
21 such contracts or contract terms may be made for
22 periods not exceeding 25 years.”.

23 (2) by adding at the end of the following new
24 paragraph:

1 “(6) A utility incentive program may include a
2 contract or contract term for a reduction in the en-
3 ergy, from a base cost established through a method-
4 ology set forth in such a contract, that would other-
5 wise be utilized in one or more federally owned
6 buildings or other federally owned facilities by rea-
7 son of the construction and/or operation of one or
8 more buildings or facilities, as well as benefits ancil-
9 lary to the purpose of such contract or contract
10 term, including savings resulting from reduced costs
11 of operation and maintenance at new and/or addi-
12 tional buildings or facilities when compared with the
13 costs of operation and maintenance at existing build-
14 ings or facilities.”.

15 **SEC. 606. FEDERAL ENERGY EFFICIENCY REQUIREMENT.**

16 (a) IN GENERAL.—Through cost-effective measures,
17 each agency shall reduce energy consumption per gross
18 square foot of its facilities by 30 percent by 2010 and 50
19 percent by 2020 relative to 1990.

20 (b) IMPLEMENTATION PLAN.—Not later than one
21 year after date of enactment of this section, each agency
22 shall develop and submit to Congress and the President
23 an implementation plan for fulfilling the requirements of
24 this section.

25 (c) ANNUAL REPORT.—

1 (1) IN GENERAL.—Each agency shall measure
2 and report annually to Congress and the President
3 its progress in meeting the requirements of this sec-
4 tion.

5 (2) GUIDELINES.—The Secretary of Energy, in
6 consultation with the Administrator of the Energy
7 Information Administration, shall develop and issue
8 guidelines for agencies' preparation of their annual
9 report, including guidance on how to measure energy
10 consumption in Federal facilities.

11 (d) EXEMPTION OF CERTAIN FACILITIES.—A facility
12 may be deemed exempt when the Secretary determines
13 that compliance with the Energy Policy Act of 1992 is
14 not practical for that particular facility. No later than one
15 year from date of enactment, the Secretary shall, in con-
16 sultation with the Administrator of the Energy Informa-
17 tion Administration, set guidelines for agencies to use in
18 excluding certain kinds of facilities to meet the require-
19 ments of this section.

20 (e) APPLICABILITY.—The Department of Defense
21 (DOD) is subject to this order only to the extent that it
22 does not impair or adversely affect military operations and
23 training (including tactical aircraft, ships, weapons sys-
24 tems, combat training, and border security).

25 (f) DEFINITIONS.—For the purposes of this section—

1 (1) “agency” means an executive agency as de-
2 fined in 5 U.S.C. 105. Military departments, as de-
3 fined in 5 U.S.C. 102, are covered under the aus-
4 pices of the Department of Defense.

5 (2) “facility” means any individual building or
6 collection of buildings, grounds, or structure, as well
7 as any fixture or part thereof, including the associ-
8 ated energy or water-consuming support systems,
9 which is constructed, renovated, or purchased in
10 whole or in part for use by the Federal Government.
11 It includes leased facilities where the Federal Gov-
12 ernment has a purchase option or facilities planned
13 for purchase. In any provision of this order, the
14 term “facility” also includes any building 100 per-
15 cent leased for use by the Federal Government
16 where the Federal Government pays directly or indi-
17 rectly for the utility costs associated with its leased
18 space, and Government-owned contractor-operated
19 facilities.

20 **SEC. 607. ENERGY EFFICIENCY SCIENCE INITIATIVE.**

21 There are authorized to be appropriated \$25,000,000
22 for fiscal year 2001 and such sums as are necessary for
23 each fiscal year thereafter, but not to exceed \$50,000,000
24 in any fiscal year, for an Energy Efficiency Science Initia-
25 tive to be managed by the Assistant Secretary for Energy

1 Efficiency and Renewable Energy in consultation with the
 2 Director of the Office of Science, for grants to be competi-
 3 tively awarded and subject to peer review for research re-
 4 lating to energy efficiency. The Secretary of Energy shall
 5 submit to the Committee on Science and the Committee
 6 on Appropriations of the United States House of Rep-
 7 resentatives, and to the Committee on Energy and Nat-
 8 ural Resources and the Committee on Appropriations of
 9 the United States Senate, an annual report on the activi-
 10 ties of the Energy Efficiency Science Initiative, including
 11 a description of the process used to award the funds and
 12 an explanation of how the research relates to energy effi-
 13 ciency.

14 **TITLE VII—ALTERNATIVE FUELS** 15 **AND RENEWABLE ENERGY**

16 **Subtitle A—Alternative Fuels**

17 **SEC. 701. EXCEPTION TO HOV PASSENGER REQUIREMENTS** 18 **FOR ALTERNATIVE FUEL VEHICLES.**

19 Section 102(a) of title 23, United States Code, is
 20 amended by inserting “(unless, at the discretion of the
 21 State highway department, the vehicle operates on, or is
 22 fueled by, an alternative fuel (as defined in section 301
 23 of Public Law 102–486 (42 U.S.C. 13211(2))))” after
 24 “required”.

1 **SEC. 702. ALTERNATIVE FUEL VEHICLE CREDITS FOR IN-**
2 **STALLATION OF QUALIFYING INFRASTRUC-**
3 **TURE.**

4 Section 508 of the Energy Policy Act of 1992 (42
5 U.S.C. 13258) is amended by adding the following at the
6 end:

7 “(e) CREDIT FOR ACQUISITION OR INSTALLATION OF
8 QUALIFYING INFRASTRUCTURE.—The Secretary shall al-
9 locate an infrastructure credit to a fleet or covered person
10 that is required to acquire an alternative fueled vehicle
11 under this title, or to a Federal fleet as defined by section
12 303(b)(3) of Title III of this Act, for the acquisition or
13 installation of the fuel or the needed infrastructure, in-
14 cluding the supply and delivery systems, necessary to oper-
15 ate or maintain the alternative fueled vehicle. Such nec-
16 essary infrastructure shall include, but is not limited to,
17 the following—

18 “(1) equipment required to refuel or recharge
19 the alternative fueled vehicle;

20 “(2) facilities or equipment required to main-
21 tain, repair or operate the alternative fueled vehicle;

22 “(3) training programs, educational materials
23 or other activities necessary to provide information
24 regarding the operation, maintenance or benefits as-
25 sociated with the alternative fueled vehicle; and

1 “(4) such other activity as the Secretary deems
2 an appropriate expenditure in support of the oper-
3 ation, maintenance or further wide spread adoption
4 or utilization of the alternative fueled vehicle.

5 “(f) QUALIFYING INFRASTRUCTURE CREDIT.—The
6 term ‘infrastructure credit’ shall mean—

7 “(1) that equipment or activity defined in sub-
8 section (e) above; and

9 “(2) be equivalent in cost to the acquisition of
10 an alternative fueled vehicle for which the expendi-
11 ture on the infrastructure is made.

12 “(g) LIMITATION ON NUMBER OF INFRASTRUCTURE
13 CREDITS ISSUED.—Each fleet or covered person that is
14 required to acquire an alternative fueled vehicle under this
15 title, or each Federal fleet as defined by section 303(b)(3)
16 of Title III of this Act, shall be limited in the number
17 of infrastructure credits that may be acquired and used
18 to meet the alternative fueled vehicle requirements of this
19 Act to no more than the equivalent of one half of the alter-
20 native fueled vehicles required per annum.”.

1 **SEC. 703. STATE AND LOCAL GOVERNMENT USE OF FED-**
2 **ERAL ALTERNATIVE FUEL REFUELING FA-**
3 **CILITIES.**

4 Section 304 of the Energy Policy Act of 1992 (42
5 U.S.C. 13213) is amended by adding the following at the
6 end:

7 “(c) STATE AND LOCAL GOVERNMENT-OWNED VEHI-
8 CLES.—Federal agencies may include any alternative fuel
9 vehicles owned by States or local governments in any com-
10 mercial arrangements for the purpose of fueling Federal
11 alternative fueled vehicles as authorized under subsection
12 (a) of this section. The Secretary may allocate equivalent
13 infrastructure credits to a Federal fleet as defined by sec-
14 tion 303(b)(3) of Title III of this Act, for the inclusion
15 of such vehicles in any such commercial fueling arrange-
16 ments.”.

17 **SEC. 704. FEDERAL FLEET FUEL ECONOMY AND USE OF AL-**
18 **TERNATIVE FUELS.**

19 “(a) FUEL ECONOMY.—Through cost-effective meas-
20 ures, each agency shall increase the average EPA fuel
21 economy rating of passenger cars and light trucks acquired
22 by at least 3 miles per gallon (mpg) by the end of fiscal
23 year 2005 compared to acquisitions in fiscal year 2000.

24 “(b) USE OF ALTERNATIVE FUELS.—Through cost-
25 effective measures, each agency shall, by the end of fiscal
26 year 2005, use alternative fuels for at least 50 percent

1 of the total annual volume of fuel used by the agency. No
2 more than 25 percent of fuel purchased by State and local
3 governments at federally-owned refueling facilities as de-
4 scribed under section 403 may be included by an agency
5 in meeting the requirement of this section.

6 “(c) IMPLEMENTATION PLAN.—No later than one
7 year after date of enactment of this section, each agency
8 shall develop and submit to Congress and the President
9 an implementation plan for fulfilling the requirements of
10 this section. Each agency should develop an implementa-
11 tion plan that meets its unique fleet configuration and
12 fleet requirements.

13 “(d) ANNUAL REPORT.—

14 “(1) IN GENERAL.—Each agency shall measure
15 and report annually to Congress and the President
16 its progress in meeting the requirements of this sec-
17 tion.

18 “(2) GUIDELINES.—The Secretary of Energy,
19 through the Federal Energy Management Program
20 and in consultation with the Administrator of the
21 Energy Information Administration, shall develop
22 and issue guidelines for agencies’ preparation of
23 their annual report, including guidance on how to
24 measure fuel economy for the collection and annual

1 reporting of data to demonstrate compliance with
2 the requirements of this section.

3 “(e) APPLICABILITY.—This order applies to each
4 Federal agency operating 20 or more motor vehicles within
5 the United States.

6 “(f) EXEMPTION OF CERTAIN VEHICLES.—Depart-
7 ment of Defense military tactical vehicles are exempt from
8 this order. Law enforcement, emergency, and any other
9 vehicle class or type determined by the Secretary, in con-
10 sultation with the Federal Energy Management Program,
11 are exempted from the requirements of this section. No
12 later than one year from date of enactment, the Secretary
13 shall, in consultation with the Federal Energy Manage-
14 ment Program, set guidelines for agencies to use in the
15 determination of exemptions.

16 “(g) DEFINITIONS.—For the purposes of this
17 section—

18 (a) “agency” means an executive agency as de-
19 fined in 5 U.S.C. 105. Military departments, as de-
20 fined, in 5 U.S.C. 102, are covered under the aus-
21 pices of the Department of Defense, and

22 (2) “alternative fuel” means any fuel defined as
23 an alternative fuel pursuant to section 301 of the
24 Energy Policy Act of 1992 (P.L. 102–486).

1 “(h) CONFORMING AMENDMENTS.—Section 400AA
2 of the Energy Policy and Conservation Act (42 U.S.C.
3 6374) is amended as follows—

4 (1) in subsection (a)(3)(E), insert the following
5 sentence at the end, “Except that, no later than fis-
6 cal year 2005 at least 50 percent of the total annual
7 volume of fuel used must be from alternative fuels.”;
8 and

9 (2) in subsection (g)(4)(B), after the words,
10 “solely on alternative fuel”, insert the words “, in-
11 cluding a three wheeled enclosed electric vehicle hav-
12 ing a VIN number”.

13 **SEC. 705. LOCAL GOVERNMENT GRANT PROGRAM.**

14 “(a) ESTABLISHMENT.—Within one year of date of
15 enactment of this section, the Secretary of Energy shall
16 establish a program for making grants to local govern-
17 ments for covering the incremental cost of qualified alter-
18 native fuel motor vehicles.

19 “(b) CRITERIA.—In deciding to whom grants shall be
20 made under this subsection, the Secretary of Energy shall
21 consider the goal of assisting the greatest number of appli-
22 cants, provided that no grant award shall exceed
23 \$1,000,000.

24 “(c) PRIORITIES.—Priority shall be given under this
25 section to those local government fleets where the use of

1 alternative fuels would have a significant beneficial effect
 2 on energy security and the environment.

3 “(d) QUALIFIED ALTERNATIVE FUEL MOTOR VEHI-
 4 CLE DEFINED.—For purposes of this section, the term
 5 “qualified motor vehicle” means any motor vehicle which
 6 is capable of operating only on an alternative fuel.

7 “(e) INCREMENTAL COST.—For purposes of this sec-
 8 tion, the incremental cost of any qualified alternative fuel
 9 motor vehicle is equal to the amount of the excess of the
 10 manufacturer’s suggested retail price for such vehicle over
 11 such price for a gasoline or diesel motor vehicle of the
 12 same model.

13 “(f) AUTHORIZATION OF APPROPRIATIONS.—For the
 14 purposes of this section, there are authorized to be appro-
 15 priated \$100,000,000 annually for each of the fiscal years
 16 2002 through 2006.

17 **Subtitle B—Renewable Energy**

18 **SEC. 710. RESIDENTIAL RENEWABLE ENERGY GRANT PRO-** 19 **GRAM.**

20 (a) IN GENERAL.—The Secretary of Energy shall de-
 21 velop and implement a grant program to offset a portion
 22 of the total cost of certain eligible residential renewable
 23 energy systems.

24 (b) ELIGIBILITY.—Grants may be awarded for any
 25 of the following—

1 (1) new installation of an eligible residential re-
2 newable energy system for an existing dwelling unit,

3 (2) purchase of an existing dwelling unit with
4 an eligible residential renewable energy system that
5 was installed prior to the date of enactment of this
6 section,

7 (3) addition to or augmentation of an existing
8 eligible residential renewable energy system installed
9 on a dwelling unit prior to the date of enactment of
10 this section, provided that any such addition or aug-
11 mentation results in additional electricity, heat, or
12 other useful energy, or

13 (4) construction of a new home or rental prop-
14 erty which includes an eligible residential renewable
15 energy system.

16 (c) TOTAL COST.—

17 (1) IN GENERAL.—For purposes of this section,
18 “total cost” means expenditure of funds for the
19 following—

20 (A) any equipment whose primary purpose
21 is to provide for the collection, conversion,
22 transfer, distribution, storage or control of elec-
23 tricity or heat generated from renewable energy,

24 (B) installation charges,

1 (C) labor costs properly allocable to the on-
2 site preparation, assembly, or original installa-
3 tion of the system, and

4 (D) piping or wiring to interconnect such
5 system to the dwelling unit.

6 (2) LEASED SYSTEMS.—In the case of a system
7 that is leased, “total cost” means the principal re-
8 covery portion of all lease payments scheduled to be
9 made during the full term of the lease, excluding in-
10 terest charges and maintenance expenses.

11 (3) EXISTING SYSTEMS.—In the case of an ad-
12 dition to or augmentation of an existing system,
13 “total cost” shall include only those expenditures re-
14 lated to the incremental cost of the addition or aug-
15 mentation, and not the full cost of the system.

16 (d) COST BUY-DOWN.—Grants provided under this
17 section shall not exceed \$3,000 per eligible residential re-
18 newable energy system, and shall be limited further as fol-
19 lows:

20 (1) For fiscal years 2002 and 2003, grants pro-
21 vided under this section shall be limited to the small-
22 er of—

23 (A) 50 percent of the total cost of the en-
24 ergy system, or

1 (B) \$3.00 per watt of system electricity
2 output or equivalent.

3 (2) For fiscal years 2004 and 2005, grants pro-
4 vided under this section shall be limited to the small-
5 er of—

6 (A) 40 percent of the total cost of the en-
7 ergy system, or

8 (B) \$2.50 per watt of system electricity
9 output.

10 (3) For fiscal years 2006 and 2007, grants pro-
11 vided under this section shall be limited to the small-
12 er of—

13 (A) 30 percent of the total cost of the en-
14 ergy system, or

15 (B) \$2.00 per watt of system electricity
16 output.

17 (4) For fiscal years 2008 and 2009, grants pro-
18 vided under this section shall be limited to the small-
19 er of—

20 (A) 20 percent of the total cost of the en-
21 ergy system, or

22 (B) \$1.50 per watt of system electricity
23 output.

1 (5) For fiscal years 2010 and 2011, grants pro-
2 vided under this section shall be limited to the small-
3 er of—

4 (A) 10 percent of the total cost of the en-
5 ergy system, or

6 (B) \$1.00 per watt of system electricity
7 output.

8 (e) LIMITATIONS.—No grant shall be allowed under
9 this section for an eligible residential renewable energy
10 system unless—

11 (1) such expenditure is made for property in-
12 stalled on or in connection with a dwelling unit
13 which is located in the United States and which is
14 used as a residence,

15 (2) in the case of solar water heating equip-
16 ment, such equipment is certified for performance
17 and safety by the nonprofit Solar Rating Certifi-
18 cation Corporation or a comparable entity endorsed
19 by the government of the State in which such prop-
20 erty is installed, and

21 (3) such system meets appropriate fire and
22 electric code requirements.

23 (f) DEFINITIONS.—For purposes of this section—

24 (1) RENEWABLE ENERGY SYSTEM.—The term
25 “renewable energy system” means property that

1 uses any of the following renewable energy forms to
2 create electricity, heat, or other forms of useful
3 energy—

- 4 (A) solar thermal,
- 5 (B) solar photovoltaic,
- 6 (C) wind,
- 7 (D) biomass,
- 8 (E) hydroelectric, or
- 9 (F) geothermal.

10 (2) SOLAR PANELS.—No expenditure relating
11 to a solar panel or other property installed as a roof
12 (or portion thereof) shall fail to be treated as prop-
13 erty described in paragraph (1) solely because it
14 constitutes a structural component of the structure
15 on which it is installed.

16 (3) ENERGY STORAGE MEDIUM.—Expenditures
17 which are properly allocable to a swimming pool, hot
18 tub, or any other energy storage medium which has
19 a function other than the function of such storage
20 shall not be taken into account for purposes of this
21 section.

22 (g) SPECIAL RULES.—For purposes of this section—

23 (1) TENANT-STOCKHOLDER IN COOPERATIVE
24 HOUSING CORPORATION.—In the case of an indi-
25 vidual who is a tenant-stockholder (as defined in 26

1 U.S.C. 216) in a cooperative housing corporation (as
2 defined in such section), such individual shall be
3 treated as having made his tenant-stockholder's pro-
4 portionate share (as defined in 26 U.S.C. 216(b)(3))
5 of any expenditures of such corporation.

6 (2) CONDOMINIUMS.—

7 (A) IN GENERAL.—In the case of an indi-
8 vidual who is a member of a condominium man-
9 agement association with respect to a condo-
10 minium which he owns, such individual shall be
11 treated as having made his proportionate share
12 of any expenditures of such association.

13 (B) CONDOMINIUM MANAGEMENT ASSOCIA-
14 TION.—For purposes of this paragraph, the
15 term “condominium management association”
16 means an organization which meets the require-
17 ments of paragraph (1) of 26 U.S.C. 528(c)
18 (other than subparagraph (E) thereof) with re-
19 spect to a condominium project substantially all
20 of the units of which are used as residences.

21 (3) RENEWABLE ENERGY SYSTEMS FOR MUL-
22 TIPLE DWELLINGS.—

23 (A) IN GENERAL.—Any expenditure other-
24 wise qualifying as an expenditure described in
25 paragraph (1) of subsection (c) shall not be

1 treated as failing to so qualify merely because
2 such expenditure was made with respect to 2 or
3 more dwelling units.

4 (B) LIMITS APPLIED SEPARATELY.—In the
5 case of any expenditure described in subpara-
6 graph (A), the amount of the grant available
7 under subsection (d) shall be computed sepa-
8 rately with respect to the amount of the ex-
9 penditure made for each dwelling unit.

10 (h) ANNUAL REPORT.—The Secretary shall submit
11 to Congress and the President an annual report on grants
12 distributed pursuant to this section. The report shall in-
13 clude, at minimum, the following—

14 (1) a summary of the eligible residential renew-
15 able energy systems receiving grants in the year just
16 concluded,

17 (2) an estimate of new renewable energy gen-
18 eration installed as a result of grants awarded, and
19 its distribution by renewable energy source and geo-
20 graphic location,

21 (3) evidence that the program is contributing to
22 declining costs for renewable energy technologies,
23 and

24 (4) description of the methods used to award
25 such grants.

1 (i) AUTHORIZATION OF APPROPRIATIONS.—For the
2 purposes of this section, there are authorized to be appro-
3 priated \$30,000,000 for fiscal year 2002 and such sums
4 as are necessary for each fiscal year thereafter, but not
5 to exceed \$150,000,000 in any fiscal year.

6 **SEC. 711. ASSESSMENT OF RENEWABLE ENERGY RE-**
7 **SOURCES**

8 (a) IN GENERAL.—No later than twelve months after
9 the date of enactment of this section, the Secretary of En-
10 ergy shall submit to the Congress an assessment of all
11 renewable energy resources available within the United
12 States.

13 (b) RESOURCE ASSESSMENT.—Such report shall in-
14 clude a detailed inventory describing the available amount
15 and characteristics of solar, wind, biomass, geothermal,
16 hydroelectric and other renewable energy sources, and an
17 estimate of the costs needed to develop each resource. The
18 report shall also include such other information as the
19 Secretary of Energy believes would be useful in siting re-
20 newable energy generation, such as appropriate terrain,
21 population and load centers, nearby energy infrastructure,
22 and location of energy and water resources.

23 (c) AVAILABILITY.—The information and cost esti-
24 mates in this report shall be updated annually and made

1 available to the public, along with the data used to create
2 the report.

3 (d) AUTHORIZATION OF APPROPRIATIONS.—For the
4 purposes of carrying out this section, there are authorized
5 to be appropriated \$10,000,000 for fiscal years 2002
6 through 2006.

7 **Subtitle C—Hydroelectric**
8 **Licensing Reform**

9 **SEC. 721. SHORT TITLE.**

10 This Act may be cited as the “Hydroelectric Licens-
11 ing Process Improvement Act of 2001”.

12 **SEC. 722. FINDINGS.**

13 Congress finds that—

14 (1) hydroelectric power is an irreplaceable
15 source of clean, economic, renewable energy with the
16 unique capability of supporting reliable electric serv-
17 ice while maintaining environmental quality;

18 (2) hydroelectric power is the leading renewable
19 energy resource of the United States;

20 (3) hydroelectric power projects provide mul-
21 tiple benefits to the United States, including recre-
22 ation, irrigation, flood control, water supply, and
23 fish and wildlife benefits;

24 (4) in the next 15 years, the bulk of all non-
25 Federal hydroelectric power capacity in the United

1 States is due to be relicensed by the Federal Energy
2 Regulatory Commission;

3 (5) the process of licensing hydroelectric
4 projects by the Commission—

5 (A) does not produce optimal decisions, be-
6 cause the agencies that participate in the proc-
7 ess are not required to consider the full effects
8 of their mandatory and recommended condi-
9 tions on a license;

10 (B) is inefficient, in part because agencies
11 do not always submit their mandatory and rec-
12 ommended conditions by a time certain;

13 (C) is burdened by uncoordinated environ-
14 mental reviews and duplicative permitting au-
15 thority; and

16 (D) is burdensome for all participants and
17 too often results in litigation; and

18 (6) while the alternative licensing procedures
19 available to applicants for hydroelectric project li-
20 censes provide important opportunities for the col-
21 laborative resolution of many of the issues in hydro-
22 electric project licensing, those procedures are not
23 appropriate in every case and cannot substitute for
24 statutory reforms of the hydroelectric licensing proc-
25 ess.

1 **SEC. 723. PURPOSE.**

2 The purpose of this Act is to achieve the objective
3 or relicensing hydroelectric power projects to maintain
4 high environmental standards while preserving low cost
5 power by—

6 (1) requiring agencies to consider the full ef-
7 fects of their mandatory and recommended condi-
8 tions on a hydroelectric power license and to docu-
9 ment that consideration of a broad range of factors;

10 (2) requiring the Federal Energy Regulatory
11 Commission to impose deadlines by which Federal
12 agencies must submit proposed mandatory and rec-
13 ommended conditions to a license; and

14 (3) making other improvements in the licensing
15 process.

16 **SEC. 724. PROCESS FOR CONSIDERATION BY FEDERAL**
17 **AGENCIES OF CONDITIONS TO LICENSES.**

18 (a) IN GENERAL.—Part I of the Federal Power Act
19 (16 U.S.C. 791a et seq.) is amended by adding at the end
20 the following:

21 **“SEC. 32. PROCESS FOR CONSIDERATION BY FEDERAL**
22 **AGENCIES OF CONDITIONS TO LICENSES.**

23 “(a) DEFINITIONS.—In this section:

24 “(1) CONDITION.—The term ‘condition’
25 means—

1 “(A) a condition to a license for a project
 2 on a Federal reservation determined by a con-
 3 sulting agency for the purpose of the first pro-
 4 viso of section 4(e); and

5 “(B) a prescription relating to the con-
 6 struction, maintenance, or operation of a
 7 fishway determined by a consulting agency for
 8 the purpose of the first sentence of section 18.

9 “(2) CONSULTING AGENCY.—The term ‘con-
 10 sulting agency’ means—

11 “(A) in relation to a condition described in
 12 paragraph (1)(A), the Federal agency with re-
 13 sponsibility for supervising the reservation; and

14 “(B) in relation to a condition described in
 15 paragraph (1)(B), the Secretary of the Interior
 16 or the Secretary of Commerce, as appropriate.

17 “(b) FACTORS TO BE CONSIDERED.—

18 “(1) IN GENERAL.—In determining a condition,
 19 a consulting agency shall take into consideration—

20 “(A) the impacts of the condition on—

21 “(i) economic and power values;

22 “(ii) electric generation capacity and
 23 system reliability;

1 “(iii) air quality (including consider-
2 ation of the impacts on greenhouse gas
3 emissions); and

4 “(iv) drinking, flood control, irriga-
5 tion, navigation, or recreation water sup-
6 ply;

7 “(B) compatibility with other conditions to
8 be included in the license, including mandatory
9 conditions of other agencies, when available;
10 and

11 “(C) means to ensure that the condition
12 addresses only direct project environmental im-
13 pacts, and does so at the lowest project costs.

14 “(2) DOCUMENTATION.—

15 “(A) IN GENERAL.—In the course of the
16 consideration of factors under paragraph (1)
17 and before any review under subsection (e), a
18 consulting agency shall create written docu-
19 mentation detailing, among other pertinent
20 matters, all proposals made, comments received,
21 facts considered, and analyses made regarding
22 each of those factors sufficient to demonstrate
23 that each of the factors was given full consider-
24 ation in determining the condition to be sub-
25 mitted to the Commission.

1 “(B) SUBMISSION TO THE COMMISSION.—

2 A consulting agency shall include the docu-
3 mentation under subparagraph (A) in its sub-
4 mission of a condition to the Commission.

5 “(c) SCIENTIFIC REVIEW.—

6 “(1) IN GENERAL.—Each condition determined
7 by a consulting agency shall be subjected to appro-
8 priately substantiated scientific review.

9 “(2) DATA.—For the purpose of paragraph (1),
10 a condition shall be considered to have been sub-
11 jected to appropriately substantiated scientific review
12 if the review—

13 “(A) was based on current empirical data
14 or field-tested data; and

15 “(B) was subjected to peer review.

16 “(d) RELATIONSHIP TO IMPACTS ON FEDERAL RES-
17 ERVATION.—In the case of a condition for the purpose of
18 the first proviso of section 4(e), each condition determined
19 by a consulting agency shall be directly and reasonably
20 related to the impacts of the project within the Federal
21 reservation.

22 “(e) ADMINISTRATION REVIEW.—

23 “(1) OPPORTUNITY FOR REVIEW.—Before sub-
24 mitting to the Commission a proposed condition, and
25 at least 90 days before a license applicant is re-

1 quired to file a license application with the Commis-
2 sion, a consulting agency shall provide the proposed
3 condition to the license applicant and offer the li-
4 cense applicant an opportunity to obtain expedited
5 review before an administrative law judge or other
6 independent reviewing body of—

7 “(A) the reasonableness of the proposed
8 condition in light of the effect that implementa-
9 tion of the condition will have on the energy
10 and economic values of a project; and

11 “(B) compliance by the consulting agency
12 with the requirements of this section, including
13 the requirement to consider the factors de-
14 scribed in subsection (b)(1).

15 “(2) COMPLETION OF REVIEW.—

16 “(A) IN GENERAL.—A review under para-
17 graph (1) shall be completed not more than 180
18 days after the license applicant notifies the con-
19 sulting agency of the request for review.

20 “(B) FAILURE TO MAKE TIMELY COMPLE-
21 TION OF REVIEW.—If review of a proposed con-
22 dition is not completed within the time specified
23 by subparagraph (A), the Commission may
24 treat a condition submitted by the consulting

1 agency as a recommendation is treated under
2 section 10(j).

3 “(3) REMAND.—If the administrative law judge
4 or reviewing body finds that a proposed condition is
5 unreasonable or that the consulting agency failed to
6 comply with any of the requirements of this section,
7 the administrative law judge or reviewing body
8 shall—

9 “(A) render a decision that—

10 “(i) explains the reasons for a finding
11 that the condition is unreasonable and may
12 make recommendations that the adminis-
13 trative law judge or reviewing body may
14 have for the formulation of a condition
15 that would not be found unreasonable; or

16 “(ii) explains the reasons for a finding
17 that a requirement was not met and may
18 describe any action that the consulting
19 agency should take to meet the require-
20 ment; and

21 “(B) remand the matter to the consulting
22 agency for further action.

23 “(4) SUBMISSION TO THE COMMISSION.—Fol-
24 lowing administrative review under this subsection, a
25 consulting agency shall—

1 “(A) take such action as is necessary to—

2 “(i) withdraw the condition;

3 “(ii) formulate a condition that
4 follows the recommendation of the admin-
5 istrative law judge or reviewing body; or

6 “(iii) otherwise comply with this sec-
7 tion; and

8 “(B) include with its submission to the
9 Commission of a proposed condition—

10 “(i) the record on administrative re-
11 view; and

12 “(ii) documentation of any action
13 taken following administrative review.

14 “(f) SUBMISSION OF FINAL CONDITION.—

15 “(1) IN GENERAL.—After an applicant files
16 with the Commission an application for a license, the
17 Commission shall set a date by which a consulting
18 agency shall submit to the Commission a final condi-
19 tion.

20 “(2) LIMITATION.—Except as provided in para-
21 graph (3), the date for submission of a final condi-
22 tion shall be not later than 1 year after the date on
23 which the Commisison gives the consulting agency
24 notice that a license application is ready for environ-
25 mental review.

1 “(3) DEFAULT.—If a consulting agency does
2 not submit a final condition to a license by the date
3 set under paragraph (1)—

4 “(A) the consulting agency shall not there-
5 after have authority to recommend or establish
6 a condition to the license; and

7 “(B) the Commission may, but shall not be
8 required to, recommend or establish an appro-
9 priate condition to the license that—

10 “(i) furthers the interest sought to be
11 protected by the provision of law that au-
12 thorizes the consulting agency to propose
13 or establish a condition to the license; and

14 “(ii) conforms to the requirements of
15 this Act.

16 “(4) EXTENSION.—The Commission may make
17 1 extension, of not more than 30 days, of a deadline
18 set under paragraph (1).

19 “(g) ANALYSIS BY THE COMMISSION.—

20 “(1) ECONOMIC ANALYSIS.—The Commission
21 shall conduct an economic analysis of each condition
22 submitted by a consulting agency to determine
23 whether the condition would render the project un-
24 economic.

1 “(2) CONSISTENCY WITH THIS SECTION.—In
 2 exercising authority under section 10(j)(2), the Com-
 3 mission shall consider whether any recommendation
 4 submitted under section 10(j)(1) is consistent with
 5 the purposes and requirements of subsections (b)
 6 and (c) of this section.

7 “(h) COMMISSION DETERMINATION ON EFFECT OF
 8 CONDITIONS.—When requested by a license applicant in
 9 a request for rehearing, the Commission shall make a writ-
 10 ten determination on whether a condition submitted by a
 11 consulting agency—

12 “(1) is in the public interest, as measured by
 13 the impact of the condition on the factors described
 14 in subsection (b)(1);

15 “(2) was subjected to scientific review in ac-
 16 cordance with subsection (c);

17 “(3) relates to direct project impacts within the
 18 reservation, in the case of a condition for the first
 19 proviso of section 4(e);

20 “(4) is reasonable;

21 “(5) is supported by substantial evidence; and

22 “(6) is consistent with this Act and other terms
 23 and conditions to be included in the license.”.

24 (b) CONFORMING AND TECHNICAL AMENDMENTS.—

1 (1) SECTION 4.—Section 4(e) of the Federal
2 Power Act (16 U.S.C. 797(e)) is amended—

3 (A) in the first proviso of the first sentence
4 by inserting after “conditions” the following: “,
5 determined in accordance with section 32,”; and

6 (B) in the last sentence, by striking the pe-
7 riod and inserting “(including consideration of
8 the impacts on greenhouse gas emissions)”.

9 (2) SECTION 18.—Section 18 of the Federal
10 Power Act (16 U.S.C. 811) is amended in the first
11 sentence by striking “prescribed by the Secretary of
12 Commerce” and inserting “prescribed, in accordance
13 with section 32, by the Secretary of the Interior or
14 the Secretary of Commerce, as appropriate”.

15 **SEC. 725. COORDINATED ENVIRONMENTAL REVIEW PROC-**
16 **ESS.**

17 Part I of the Federal Power Act (16 U.S.C. 791a
18 et seq.) (as amended by section 4) is amended by adding
19 at the end the following:

20 **“SEC. 33. COORDINATED ENVIRONMENTAL REVIEW PROC-**
21 **ESS.**

22 “(a) LEAD AGENCY RESPONSIBILITY.—The Commis-
23 sion, as the lead agency for environmental reviews under
24 the National Environmental Policy Act of 1969 (42 U.S.C.

1 4321 et seq.) for projects licensed under this part, shall
 2 conduct a single consolidated environmental review—

3 “(1) for each such project; or

4 “(2) if appropriate, for multiple projects located
 5 in the same area.

6 “(b) CONSULTING AGENCIES.—In connection with
 7 the formulation of a condition in accordance with section
 8 32, a consulting agency shall not perform any environ-
 9 mental review in addition to any environmental review per-
 10 formed by the Commission in connection with the action
 11 to which the condition relates.

12 “(c) DEADLINES.—

13 “(1) IN GENERAL.—The Commission shall set a
 14 deadline for the submission of comments by Federal,
 15 State, and local government agencies in connection
 16 with the preparation of any environmental impact
 17 statement or environmental assessment required for
 18 a project.

19 “(2) CONSIDERATIONS.—In setting a deadline
 20 under paragraph (1), the Commission shall take into
 21 consideration—

22 “(A) the need of the license applicant for
 23 a prompt and reasonable decision;

24 “(B) the resources of interested Federal,
 25 State, and local government agencies; and

1 “(C) applicable statutory requirements.”.

2 **SEC. 726. STUDY OF SMALL HYDROELECTRIC PROJECTS.**

3 (a) IN GENERAL.—Not later than 18 months after
 4 the date of enactment of this Act, the Federal Energy
 5 Regulatory Commission shall submit to the Committee on
 6 Energy and Natural Resources of the Senate and the
 7 Committee on Commerce of the House of Representatives
 8 a study of the feasibility of establishing a separate licens-
 9 ing procedure for small hydroelectric projects.

10 (b) DEFINITION OF SMALL HYDROELECTRIC
 11 PROJECT.—The Commission may by regulation define the
 12 term “small hydroelectric project” for the purpose of sub-
 13 section (a), except that the term shall include at a min-
 14 imum a hydroelectric project that has a generating capac-
 15 ity of 5 megawatts or less.

16 **TITLE VIII—ELECTRIC SUPPLY**
 17 **RELIABILITY; PURPA REPEAL;**
 18 **PUHCA REPEAL**

19 **Subtitle A—Electric Energy**
 20 **Transmission Reliability**

21 **SEC. 801. SHORT TITLE.**

22 This Subtitle may be cited as the “National Electric
 23 Reliability Act”.

1 **SEC. 802. ELECTRIC ENERGY TRANSMISSION RELIABILITY.**

2 (a) ELECTRIC RELIABILITY ORGANIZATION AND
3 OVERSIGHT.—

4 (1) IN GENERAL.—The Federal Power Act is
5 amended by adding the following new section after
6 section 214:

7 **“SEC. 215. ELECTRIC RELIABILITY ORGANIZATION AND**
8 **OVERSIGHT.**

9 “(a) DEFINITIONS.—As used in this section:

10 “(1) AFFILIATED REGIONAL RELIABILITY ENTI-
11 TY.—The term ‘affiliated regional reliability entity’
12 means an entity delegated authority under the provi-
13 sions of subsection (h).

14 “(2) BULK POWER SYSTEM.—The term ‘bulk
15 power system’ means all facilities and control sys-
16 tems necessary for operating an interconnected
17 transmission grid (or any portion thereof), including
18 high-voltage transmission lines; substations; control
19 centers; communications; data, and operations plan-
20 ning facilities; and the output of generating units
21 necessary to maintain transmission system reli-
22 ability.

23 “(3) ELECTRIC RELIABILITY ORGANIZATION, OR
24 ORGANIZATION.—The term ‘Electric Reliability Or-
25 ganization’ or ‘Organization’ means the organization

1 approved by the Commission under subsection
2 (d)(4).

3 “(4) ENTITY RULE.—The term ‘entity rule’
4 means a rule adopted by an affiliated regional reli-
5 ability entity for a specific region and designed to
6 implement or enforce one or more Organization
7 Standards. An entity rule shall be approved by the
8 organization and once approved, shall be treated as
9 an Organization Standard.

10 “(5) INDUSTRY SECTOR.—The term ‘industry
11 sector’ means a group of users of the bulk power
12 system with substantially similar commercial inter-
13 ests, as determined by the Board of the Electric Re-
14 liability Organization.

15 “(6) INTERCONNECTION.—The term ‘inter-
16 connection’ means a geographic area in which the
17 operation of bulk power system components is syn-
18 chronized such that the failure of one or more of
19 such components may adversely affect the ability of
20 the operators of other components within the inter-
21 connection to maintain safe and reliable operation of
22 the facilities within their control.

23 “(7) ORGANIZATION STANDARD.—The term
24 ‘Organization Standard’ means a policy or standard
25 duly adopted by the Electric Reliability Organization

1 to provide for the reliable operation of a bulk power
2 system.

3 “(8) PUBLIC INTEREST GROUP.—The term
4 ‘public interest group’ means any nonprofit private
5 or public organization that has an interest in the ac-
6 tivities of the Electric Reliability Organization, in-
7 cluding, but not limited to, ratepayer advocates, en-
8 vironmental groups, and State and local government
9 organizations that regulate market participants and
10 promulgate government policy.

11 “(9) VARIANCE.—The term ‘variance’ means an
12 exception or variance from the requirements of an
13 Organization Standard (including a proposal for an
14 Organization Standard where there is no Organiza-
15 tion Standard) that is adopted by an affiliated re-
16 gional reliability entity and applicable to all or a
17 part of the region for which the affiliated regional
18 reliability entity is responsible. A variance shall be
19 approved by the organization and once approved,
20 shall be treated as an Organization Standard.

21 “(10) SYSTEM OPERATOR.—The term ‘system
22 operator’ means any entity that operates or is re-
23 sponsible for the operation of a bulk power system,
24 including but not limited to a control area operator,
25 an independent system operator, a regional trans-

1 mission organization, a transmission company, a
2 transmission system operator, or a regional security
3 coordinator.

4 “(11) USER OF THE BULK POWER SYSTEM.—

5 The term ‘user of the bulk power system’ means any
6 entity that sells, purchases, or transmits electric
7 power over a bulk power system, or that owns, oper-
8 ates, or maintains facilities or control systems that
9 are part of a bulk power system, or that is a system
10 operator.

11 “(b) COMMISSION AUTHORITY.—

12 “(1) Within the United States, the Commission
13 shall have jurisdiction over the Electric Reliability
14 Organization, all affiliated regional reliability enti-
15 ties, all system operators, and all users of the bulk-
16 power system, for purposes of approving and enforce-
17 ing compliance with the requirements of this section.

18 “(2) The Commission may, by rule, define any
19 other term used in this section, provided such defini-
20 tion is consistent with the definitions in, and the
21 purpose and intent of, this Act.

22 “(3) Not later than 90 days after the date of
23 enactment of this section, the Commission shall
24 issue a proposed rule for implementing the require-
25 ments of this section. The Commission shall provide

1 notice and opportunity for comment on the proposed
2 rule. The Commission shall issue a final rule under
3 this subsection within 180 days after the date of en-
4 actment of this section.

5 “(4) Nothing in this section shall be construed
6 as limiting or impairing any authority of the Com-
7 mission under any other provision of this Act, in-
8 cluding its exclusive authority to determine rates,
9 terms, and conditions of transmission services sub-
10 ject to its jurisdiction.

11 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
12 lowing enactment of this section, and prior to the approval
13 of an organization under subsection (d), any entity, in-
14 cluding the North American Electric Reliability Council
15 and its member regional reliability councils, may file any
16 reliability standard, guidance, or practice that such entity
17 would propose to be made mandatory and enforceable. The
18 Commission, after allowing an opportunity to submit com-
19 ments, may approve any such proposed mandatory stand-
20 ard, guidance, or practice, or any amendment thereto, if
21 it finds that the standard, guidance, or practice, or
22 amendment is just, reasonable, not unduly discriminatory
23 or preferential, and in the public interest. The Commission
24 may, without further proceeding or finding, grant its ap-
25 proval to any standard, guidance, or practice for which

1 no substantive objections are filed in the comment period.
2 Filed standards, guidances, or practices, including any
3 amendments thereto, shall be mandatory and applicable
4 according to their terms following approval by the Com-
5 mission and shall remain in effect until—

6 (1) withdrawn, disapproved, or superseded by
7 an Organization Standard, issued or approved by the
8 Electric Reliability Organization and made effective
9 by the Commission under subsection (e); or

10 (2) disapproved by the Commission if, upon
11 complaint or upon its own motion and after notice
12 and an opportunity for comment, the Commission
13 finds the standard, guidance, or practice unjust, un-
14 reasonable, unduly discriminatory, or preferential or
15 not in the public interest.

16 Standards, guidances, or practices in effect pursuant to
17 the provisions of this subsection shall be enforceable by
18 the Commission.

19 “(d) ORGANIZATION APPROVAL.—

20 “(1) Following the issuance of a final Commis-
21 sion rule under subsection (b)(3), an entity may sub-
22 mit an application to the Commission for approval
23 as the Electric Reliability Organization. The appli-
24 cant shall specify in its application its governance

1 and procedures, as well as its funding mechanism
2 and initial funding requirements.

3 “(2) The Commission shall provide public no-
4 tice of the application and afford interested parties
5 an opportunity to comment.

6 “(3) The Commission shall approve the applica-
7 tion if the Commission determines that the
8 applicant—

9 “(A) has the ability to develop, implement,
10 and enforce standards that provide for an ade-
11 quate level of reliability of the bulk power sys-
12 tem;

13 “(B) permits voluntary membership to any
14 user of the bulk power system or public interest
15 group;

16 “(C) assures fair representation of its
17 members in the selection of its directors and
18 fair management of its affairs, taking into ac-
19 count the need for efficiency and effectiveness
20 in decisionmaking and operations and the re-
21 quirements for technical competency in the de-
22 velopment of Organization Standards and the
23 exercise of oversight of bulk power system reli-
24 ability;

1 “(D) assures that no two industry sectors
2 have the ability to control, and no one industry
3 sector has the ability to veto, the Electric Reli-
4 ability Organization’s discharge of its respon-
5 sibilities (including actions by committees rec-
6 ommending standards to the board or other
7 board actions to implement and enforce stand-
8 ards);

9 “(E) provides for governance by a board
10 wholly comprised of independent directors;

11 “(F) provides a funding mechanism and
12 requirements that are just, reasonable, and not
13 unduly discriminatory or preferential and are in
14 the public interest, and which satisfy the re-
15 quirements of subsection (I);

16 “(G) establishes procedures for develop-
17 ment of Organization Standards that provide
18 reasonable notice and opportunity for public
19 comment, taking into account the need for effi-
20 ciency and effectiveness in decisionmaking and
21 operations and the requirements for technical
22 competency in the development of Organization
23 Standards, and which standards development
24 process has the following attributes—

25 “(i) openness,

1 “(ii) balance of interests, and

2 “(iii) due process, except that the pro-
3 cedures may include alternative procedures
4 for emergencies;

5 “(H) establishes fair and impartial proce-
6 dures for implementation and enforcement of
7 Organization Standards, either directly or
8 through delegation to an affiliated regional reli-
9 ability entity, including the imposition of pen-
10 alties, limitations on activities, functions, or op-
11 erations, or other appropriate sanctions;

12 “(I) establishes procedures for notice and
13 opportunity for public observation of all meet-
14 ings, except that the procedures for public ob-
15 servation may include alternative procedures for
16 emergencies or for the discussion of information
17 the directors determine should take place in
18 closed session, such as litigation, personnel ac-
19 tions, or commercially sensitive information;

20 “(J) provides for the consideration of rec-
21 ommendations of States and State commissions;
22 and

23 “(K) addresses other matters that the
24 Commission may deem necessary or appropriate
25 to ensure that the procedures, governance, and

1 funding of the Electric Reliability Organization
2 are just, reasonable, not unduly discriminatory
3 or preferential, and are in the public interest.

4 “(4) The Commission shall approve only one
5 Electric Reliability Organization. If the Commission
6 receives two or more timely applications that satisfy
7 the requirements of this subsection, the Commission
8 shall approve only the application it concludes will
9 best implement the provisions of this section.

10 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
11 ORGANIZATION STANDARDS.—

12 “(1) The Electric Reliability Organization shall
13 file with the Commission any new or modified orga-
14 nization standards, including any variances or entity
15 rules, and the Commission shall follow the proce-
16 dures under paragraph (2) for review of that filing.

17 “(2) Submissions under paragraph (1) shall
18 include—

19 “(A) a concise statement of the purpose of
20 the proposal, and

21 “(B) a record of any proceedings con-
22 ducted with respect to such proposal.

23 The Commission shall provide notice of the filing of
24 such proposal and afford interested entities 30 days
25 to submit comments. The Commission, after taking

1 into consideration any submitted comments, shall
2 approve or disapprove such proposal not later than
3 60 days after the deadline for the submission of
4 comments, except that the Commission may extend
5 the 60-day period for an additional 90 days for good
6 cause, and except further that if the Commission
7 does not act to approve or disapprove a proposal
8 within the foregoing periods, the proposal shall go
9 into effect subject to its terms, without prejudice to
10 the authority of the Commission thereafter to modify
11 the proposal in accordance with the standards and
12 requirements of this section. Proposals approved by
13 the Commission shall take effect according to their
14 terms but not earlier than 30 days after the effective
15 date of the Commission's order, except as provided
16 in paragraph (3) of this subsection.

17 “(3)(A) In the exercise of its review responsibil-
18 ities under this subsection, the Commission shall
19 give due weight to the technical expertise of the
20 Electric Reliability Organization with respect to the
21 content of a new or modified organization standard,
22 but shall not defer to the organization with respect
23 to the effect of the standard on competition. The
24 Commission shall approve a proposed new or modi-
25 fied organization standard if it determines the pro-

1 proposal to be just, reasonable, not unduly discrimina-
2 tory or preferential, and in the public interest.

3 “(B) An existing or proposed organization
4 standard which is disapproved in whole or in part by
5 the Commission shall be remanded to the Electric
6 Reliability Organization for further consideration.

7 “(C) The Commission, on its own motion or
8 upon complaint, may direct the Electric Reliability
9 Organization to develop an organization standard,
10 including modification to an existing organization
11 standard, addressing a specific matter by a date cer-
12 tain if the Commission considers such new or modi-
13 fied organization standard necessary or appropriate
14 to further the purposes of this section. The Electric
15 Reliability Organization shall file any such new or
16 modified organization standard in accordance with
17 this subsection.

18 “(D) An affiliated regional reliability entity
19 may propose a variance or entity rule to the Electric
20 Reliability Organization. The affiliated regional reli-
21 ability entity may request that the Electric Reli-
22 ability Organization expedite consideration of the
23 proposal, and may file a notice of such request with
24 the Commission, if expedited consideration is nec-
25 essary to provide for bulk-power system reliability. If

1 the Electric Reliability Organization fails to adopt
2 the variance or entity rule, either in whole or in
3 part, the affiliated regional reliability entity may re-
4 quest that the Commission review such action. If the
5 Commission determines, after its review of such a
6 request, that the action of the Electric Reliability
7 Organization did not conform to the applicable
8 standards and procedures approved by the Commis-
9 sion, or if the Commission determines that the vari-
10 ance or entity rule is just, reasonable, not unduly
11 discriminatory or preferential, and in the public in-
12 terest, and that the Electric Reliability Organization
13 has unreasonably rejected the proposed variance or
14 entity rule, then the Commission may remand the
15 proposed variance or entity rule for further consider-
16 ation by the Electric Reliability Organization or may
17 direct the Electric Reliability Organization or the af-
18 filiated regional reliability entity to develop a vari-
19 ance or entity rule consistent with that requested by
20 the affiliated regional reliability entity. Any such
21 variance or entity rule proposed by an affiliated re-
22 gional reliability entity shall be submitted to the
23 Electric Reliability Organization for review and fil-
24 ing with the Commission in accordance with the pro-
25 cedures specified in this subsection.

1 “(E) Notwithstanding any other provision of
2 this subsection, a proposed organization standard or
3 amendment shall take effect according to its terms
4 if the Electric Reliability Organization determines
5 that an emergency exists requiring that such pro-
6 posed organization standard or amendment take ef-
7 fect without notice or comment. The Electric Reli-
8 ability Organization shall notify the Commission im-
9 mediately following such determination and shall file
10 such emergency organization standard or amend-
11 ment with the Commission not later than 5 days fol-
12 lowing such determination and shall include in such
13 filing an explanation of the need for such emergency
14 standard. Subsequently, the Commission shall pro-
15 vide notice of the organization standard or amend-
16 ment for comment, and shall follow the procedures
17 set out in paragraphs (2) and (3) for review of the
18 new or modified organization standard. Any such or-
19 ganization standard that has gone into effect shall
20 remain in effect unless and until suspended or dis-
21 approved by the Commission. If the Commission de-
22 termines at any time that the emergency organiza-
23 tion standard or amendment is not necessary, the
24 Commission may suspend such emergency organiza-
25 tion standard or amendment.

1 “(4) All users of the bulk power system shall
2 comply with any organization standard that takes ef-
3 fect under this section.

4 “(f) COORDINATION WITH CANADA AND MEXICO.—
5 The Electric Reliability Organization shall take all appro-
6 priate steps to gain recognition in Canada and Mexico.
7 The United States shall use its best efforts to enter into
8 international agreements with the appropriate govern-
9 ments of Canada and Mexico to provide for effective com-
10 pliance with organization standards and to provide for the
11 effectiveness of the Electric Reliability Organization in
12 carrying out its mission and responsibilities. All actions
13 taken by the Electric Reliability Organization, any affili-
14 ated regional entity, and the Commission shall be con-
15 sistent with the provisions of such international agree-
16 ments.

17 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
18 FUNDING.—

19 “(1) The Electric Reliability Organization shall
20 file with the Commission any proposed change in its
21 procedures, governance, or funding, or any changes
22 in the affiliated regional reliability entity’s proce-
23 dures, governance, or funding relating to delegated
24 functions, and shall include with the filing an expla-
25 nation of the basis and purpose for the change.

1 “(2) A proposed procedural change may take
2 effect 90 days after filing with the Commission if
3 the change constitutes a statement of policy, prac-
4 tice, or interpretation with respect to the meaning or
5 enforcement of an existing procedure. Otherwise, a
6 proposed procedural change shall take effect only
7 upon a finding by the Commission, after notice and
8 opportunity for comments, that the change is just,
9 reasonable, not unduly discriminatory or pref-
10 erential, is in the public interest, and satisfies the
11 requirements of subsection (d)(4).

12 “(3) A change in governance or funding shall
13 not take effect unless the Commission finds that the
14 change is just, reasonable, not unduly discriminatory
15 or preferential, in the public interest, and satisfies
16 the requirements of subsection (d)(4).

17 “(4) The Commission, upon complaint or upon
18 its own motion, may require the Electric Reliability
19 Organization to amend the procedures, governance,
20 or funding if the Commission determines that the
21 amendment is necessary to meet the requirements of
22 this section. The Electric Reliability Organization
23 shall file the amendment in accordance with para-
24 graph (1) of this subsection.

25 “(h) DELEGATIONS OF AUTHORITY.—

1 “(1) The Electric Reliability Organization shall,
2 upon request by an entity, enter into an agreement
3 with such entity for the delegation of authority to
4 implement and enforce compliance with organization
5 standards in a specified geographic area if the orga-
6 nization finds that the entity requesting the delega-
7 tion satisfies the requirements of subparagraphs (A),
8 (B), (C), (D), (F), (J), and (K) of subsection (d)(4),
9 and if the delegation promotes the effective and effi-
10 cient implementation and administration of bulk
11 power system reliability. The Electric Reliability Or-
12 ganization may enter into an agreement to delegate
13 to the entity any other authority, except that the
14 Electric Reliability Organization shall reserve the
15 right to set and approve standards for bulk power
16 system reliability.

17 “(2) The Electric Reliability Organization shall
18 file with the Commission any agreement entered into
19 under this subsection and any information the Com-
20 mission requires with respect to the affiliated re-
21 gional reliability entity to which authority is to be
22 delegated. The Commission shall approve the agree-
23 ment, following public notice and an opportunity for
24 comment, if it finds that the agreement meets the
25 requirements of paragraph (1), and is just, reason-

1 able, not unduly discriminatory or preferential, and
2 is in the public interest. A proposed delegation
3 agreement with an affiliated regional reliability enti-
4 ty organized on an interconnection-wide basis shall
5 be rebuttably presumed by the Commission to pro-
6 mote the effective and efficient implementation and
7 administration of bulk power system reliability. No
8 delegation by the Electric Reliability Organization
9 shall be valid unless approved by the Commission.

10 “(3)(A) A delegation agreement entered into
11 under this subsection shall specify the procedures for
12 an affiliated regional reliability entity to propose en-
13 tity rules or variances for review by the Electric Re-
14 liability Organization. With respect to any such pro-
15 posal that would apply on an interconnection-wide
16 basis, the Electric Reliability Organization shall pre-
17 sume such proposal valid if made by an interconnec-
18 tion-wide affiliated regional reliability entity unless
19 the Electric Reliability Organization makes a written
20 finding that the proposal—

21 “(i) was not developed in a fair and open
22 process that provided an opportunity for all in-
23 terested parties to participate;

1 “(ii) has a significant adverse impact on
2 reliability or commerce in other interconnec-
3 tions;

4 “(iii) fails to provide a level of reliability of
5 the bulk-power system within the interconnec-
6 tion such that it would constitute a serious and
7 substantial threat to public health, safety, wel-
8 fare, or national security; or

9 “(iv) creates a serious and substantial bur-
10 den on competitive markets within the inter-
11 connection that is not necessary for reliability.

12 “(B) With respect to any such proposal that
13 would apply only to part of an interconnection, the
14 Electric Reliability Organization shall find such pro-
15 posal valid if the affiliated regional reliability entity
16 or entities making the proposal demonstrate that
17 it—

18 “(i) was developed in a fair and open proc-
19 ess that provided an opportunity for all inter-
20 ested parties to participate;

21 “(ii) would not have an adverse impact on
22 commerce that is not necessary for reliability;

23 “(iii) provides a level of bulk power system
24 reliability adequate to protect public health,
25 safety, welfare, and national security, and

1 would not have a significant adverse impact on
2 reliability; and

3 “(iv) in the case of a variance, is based on
4 legitimate differences between regions or be-
5 tween subregions within the affiliated regional
6 reliability entity’s geographic area.

7 The Electric Reliability Organization shall approve
8 or disapprove such proposal within 120 days, or the
9 proposal shall be deemed approved. Following ap-
10 proval of any such proposal under this paragraph,
11 the Electric Reliability Organization shall seek Com-
12 mission approval pursuant to the procedures pre-
13 scribed under subsection (e)(3). Affiliated regional
14 reliability entities may not make requests for ap-
15 proval directly to the Commission except pursuant to
16 subsection (e)(3)(D).

17 “(4) If an affiliated regional reliability entity
18 requests, consistent with paragraph (1) of this sub-
19 section, that the Electric Reliability Organization
20 delegate authority to it, but is unable within 180
21 days to reach agreement with the Electric Reliability
22 Organization with respect to such requested delega-
23 tion, such entity may seek relief from the Commis-
24 sion. If, following notice and opportunity for com-
25 ment, the Commission determines that a delegation

1 to the entity would meet the requirements of para-
2 graph (1) above, and that the delegation would be
3 just, reasonable, not unduly discriminatory or pref-
4 erential, and in the public interest, and that the
5 Electric Reliability Organization has unreasonably
6 withheld such delegation, the Commission may, by
7 order, direct the Electric Reliability Organization to
8 make such delegation.

9 “(5)(A) The Commission may, upon its own
10 motion or upon complaint, and with notice to the ap-
11 propriate affiliated regional reliability entity or enti-
12 ties, direct the Electric Reliability Organization to
13 propose a modification to an agreement entered into
14 under this subsection if the Commission determines
15 that—

16 “(i) the affiliated regional reliability entity
17 no longer has the capacity to carry out effec-
18 tively or efficiently its implementation or en-
19 forcement responsibilities under that agree-
20 ment, has failed to meet its obligations under
21 that agreement, or has violated any provision of
22 this section;

23 “(ii) the rules, practices, or procedures of
24 the affiliated regional reliability entity no longer
25 provide for fair and impartial discharge of its

1 implementation or enforcement responsibilities
2 under the agreement;

3 “(iii) the geographic boundary of a trans-
4 mission entity approved by the Commission is
5 not wholly within the boundary of an affiliated
6 regional reliability entity and such difference is
7 inconsistent with the effective and efficient im-
8 plementation and administration of bulk power
9 system reliability; or

10 “(iv) the agreement is inconsistent with
11 another delegation agreement as a result of ac-
12 tions taken under paragraph (4) of this sub-
13 section.

14 “(B) Following an order of the Commission
15 issued under subparagraph (A), the Commission
16 may suspend the affected agreement if the Electric
17 Reliability Organization or the affiliated regional re-
18 liability entity does not propose an appropriate and
19 timely modification. If the agreement is suspended,
20 the Electric Reliability Organization shall assume
21 the previously delegated responsibilities. The Com-
22 mission shall allow the Electric Reliability Organiza-
23 tion and the affiliated regional reliability entity an
24 opportunity to appeal the suspension.

1 “(i) ORGANIZATION MEMBERSHIP.—Every system
2 operator shall be required to be a member of the Electric
3 Reliability Organization and shall be required also to be
4 a member of any affiliated regional reliability entity oper-
5 ating under an agreement effective pursuant to subsection
6 (h) applicable to the region in which the system operates
7 or is responsible for the operation of bulkpower system
8 facilities.

9 “(j) INJUNCTIONS AND DISCIPLINARY ACTIONS.—

10 “(1) Consistent with the range of actions ap-
11 proved by the Commission under subsection
12 (d)(4)(H), the Electric Reliability Organization may
13 impose a penalty, limitation of activities, functions,
14 operations, or other disciplinary action the Electric
15 Reliability Organization finds appropriate against a
16 user of the bulk power system if the Electric Reli-
17 ability Organization, after notice and an opportunity
18 for interested parties to be heard, issues a finding
19 in writing that the user of the bulk-power system
20 has violated an organization standard. The Electric
21 Reliability Organization shall immediately notify the
22 Commission of any disciplinary action imposed with
23 respect to an act or failure to act of a user of the
24 bulk-power system that affected or threatened to af-
25 fect bulk power system facilities located in the

1 United States, and the sanctioned party shall have
2 the right to seek modification or rescission of such
3 disciplinary action by the Commission. If the organi-
4 zation finds it necessary to prevent a serious threat
5 to reliability, the organization may seek injunctive
6 relief in a Federal court in the district in which the
7 affected facilities are located.

8 “(2) A disciplinary action taken under para-
9 graph (1) may take effect not earlier than the 30th
10 day after the Electric Reliability Organization files
11 with the Commission its written finding and record
12 of proceedings before the Electric Reliability Organi-
13 zation and the Commission posts its written finding,
14 unless the Commission, on its own motion or upon
15 application by the user of the bulk power system
16 which is the subject of the action, suspends the ac-
17 tion. The action shall remain in effect or remain sus-
18 pended unless and until the Commission, after notice
19 and opportunity for hearing, affirms, sets aside,
20 modifies, or reinstates the action, but the Commis-
21 sion shall conduct such hearing under procedures es-
22 tablished to ensure expedited consideration of the
23 action taken.

24 “(3) The Commission, on its own motion or on
25 complaint, may order compliance with an organiza-

1 tion standard and may impose a penalty, limitation
2 of activities, functions, or operations, or take such
3 other disciplinary action as the Commission finds
4 appropriate, against a user of the bulk power system
5 with respect to actions affecting or threatening to
6 affect bulk power system facilities located in the
7 United States if the Commission finds, after notice
8 and opportunity for a hearing, that the user of the
9 bulk power system has violated or threatens to vio-
10 late an organization standard.

11 “(4) The Commission may take such action as
12 is necessary against the Electric Reliability Organi-
13 zation or an affiliated regional reliability entity to
14 assure compliance with an organization standard, or
15 any Commission order affecting the Electric Reli-
16 ability Organization or an affiliated regional reli-
17 ability entity.

18 “(k) RELIABILITY REPORTS.—The Electric Reli-
19 ability Organization shall conduct periodic assessments of
20 the reliability and adequacy of the interconnected bulk
21 power system in North America and shall report annually
22 to the Secretary of Energy and the Commission its find-
23 ings and recommendations for monitoring or improving
24 system reliability and adequacy.

1 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
2 COSTS.—The reasonable costs of the Electric Reliability
3 Organization, and the reasonable costs of each affiliated
4 regional reliability entity that are related to implementa-
5 tion and enforcement of organization standards or other
6 requirements contained in a delegation agreement ap-
7 proved under subsection (h), shall be assessed by the Elec-
8 tric Reliability Organization and each affiliated regional
9 reliability entity, respectively, taking into account the rela-
10 tionship of costs to each region and based on an allocation
11 that reflects an equitable sharing of the costs among all
12 end users. The Commission shall provide by rule for the
13 review of such costs and allocations, pursuant to the
14 standards in this subsection and subsection (d)(4)(F).

15 “(m) SAVINGS PROVISIONS.—

16 “(1) The Electric Reliability Organization shall
17 have authority to develop, implement and enforce
18 compliance with standards for the reliable operation
19 of only the bulk power system.

20 “(2) This section does not provide the Electric
21 Reliability Organization or the Commission with the
22 authority to set and enforce compliance with stand-
23 ards for adequacy or safety of electric facilities or
24 services.

1 “(3) Nothing in this section shall be construed
2 to preempt any authority of any State to take action
3 to ensure the safety, adequacy, and reliability of
4 electric service within that State, as long as such ac-
5 tion is not inconsistent with any Organization
6 Standard.

7 “(4) Within 90 days of the application of the
8 Electric Reliability Organization or other affected
9 party, the Commission shall issue a final order de-
10 termining whether a State action is inconsistent with
11 an Organization Standard, after notice and oppor-
12 tunity for comment, taking into consideration any
13 recommendations of the Electric Reliability Organi-
14 zation.

15 “(5) The Commission, after consultation with
16 the Electric Reliability Organization, may stay the
17 effectiveness of any State action, pending the Com-
18 mission’s issuance of a final order.

19 “(n) REGIONAL ADVISORY BODIES.—The Commis-
20 sion shall establish a regional advisory body on the petition
21 of at least two-thirds of the States within a region that
22 have more than one-half of their electric load served within
23 the region. A regional advisory body shall be composed of
24 one member from each participating State in the region,
25 appointed by the Governor of each State, and may include

1 representatives of agencies, States, and provinces outside
2 the United States, upon execution of an international
3 agreement or agreements described in subsection (f). A
4 regional advisory body may provide advice to the electric
5 reliability organization, an affiliated regional reliability en-
6 tity, or the Commission regarding the governance of an
7 existing or proposed affiliated regional reliability entity
8 within the same region, whether an organization standard,
9 entity rule, or variance proposed to apply within the region
10 is just, reasonable, not unduly discriminatory or pref-
11 erential, and in the public interest, and whether fees pro-
12 posed to be assessed within the region are just, reasonable,
13 not unduly discriminatory or preferential, in the public in-
14 terest, and consistent with the requirements of subsection
15 (1). The Commission may give deference to the advice of
16 any such regional advisory body if that body is organized
17 on an interconnection-wide basis.

18 “(o) COORDINATION WITH REGIONAL TRANSMISSION
19 ORGANIZATIONS.—

20 “(1) Each regional transmission organization
21 authorized by the Commission shall be responsible
22 for maintaining the short-term reliability of the bulk
23 power system that it operates, consistent with orga-
24 nization standards.

1 “(2) Except as provided in paragraph (5), in
2 connection with a proceeding under subsection (e) to
3 consider a proposed organization standard, each re-
4 gional transmission organization authorized by the
5 Commission shall report to the Commission, and no-
6 tify the electric reliability organization and any ap-
7 plicable affiliated regional reliability entity, regard-
8 ing whether the proposed organization standard
9 hinders or conflicts with that regional transmission
10 organization’s ability to fulfill the requirements of
11 any rule, regulation, order, tariff, rate schedule, or
12 agreement accepted, approved or ordered by the
13 Commission. Where such hindrance or conflict is
14 identified, the Commission shall address such hin-
15 drance or conflict, and the need for any changes to
16 such rule, order, tariff, rate schedule, or agreement
17 accepted, approved or ordered by the Commission in
18 its order under subsection (e) regarding the pro-
19 posed standard. Where such hindrance or conflict is
20 identified between a proposed organization standard
21 and a provision of any rule, order, tariff, rate sched-
22 ule or agreement accepted, approved or ordered by
23 the Commission applicable to a regional trans-
24 mission organization, nothing in this section shall re-
25 quire a change in the regional transmission organi-

1 zation’s obligation to comply with such provision un-
2 less the Commission orders such a change and the
3 change becomes effective. If the Commission finds
4 that the tariff, rate schedule, or agreement needs to
5 be changed, the regional transmission organization
6 must expeditiously make a section 205 filing to re-
7 flect the change. If the Commission finds that the
8 proposed organization standard needs to be changed,
9 it shall remand the proposed organization standard
10 to the electric reliability organization under sub-
11 section (e)(3)(B).

12 “(3) Except as provided in paragraph (5), to
13 the extent hindrances and conflicts arise after ap-
14 proval of a reliability standard under subsection (c)
15 or organization standard under subsection (e), each
16 regional transmission organization authorized by the
17 Commission shall report to the Commission, and no-
18 tify the electric reliability organization and any ap-
19 plicable affiliated regional reliability entity, regard-
20 ing any reliability standard approved under sub-
21 section (c) or organization standard that hinders or
22 conflicts with that regional transmission organiza-
23 tion’s ability to fulfill the requirements of any rule,
24 regulation, order, tariff, rate schedule, or agreement
25 accepted, approved or ordered by the Commission.

1 The Commission shall seek to assure that such hin-
2 drances or conflicts are resolved promptly. Where a
3 hindrance or conflict is identified between a reli-
4 ability standard or an organization standard and a
5 provision of any rule, order, tariff, rate schedule or
6 agreement accepted, approved or ordered by the
7 Commission applicable to a regional reliability orga-
8 nization, nothing in this section shall require a
9 change in the regional transmission organization's
10 obligation to comply with such provision unless the
11 Commission orders such a change and the change
12 becomes effective. If the Commission finds that the
13 tariff, rate schedule or agreement needs to be
14 changed, the regional transmission organization
15 must expeditiously make a section 205 filing to re-
16 flect the change. If the Commission finds that an or-
17 ganization standard needs to be changed, it shall
18 order the electric reliability organization to develop
19 and submit a modified organization standard under
20 subsection (e)(3)(C).

21 “(4) An affiliated regional reliability entity and
22 a regional transmission organization operating in the
23 same geographic area shall cooperate to avoid con-
24 flicts between implementation and enforcement of
25 organization standards by the affiliated regional reli-

1 ability entity and implementation and enforcement
2 by the regional transmission organization of tariffs,
3 rate schedules, and agreements accepted, approved
4 or ordered by the Commission. In areas without an
5 affiliated regional reliability entity, the electric reli-
6 ability organization shall act as the affiliated re-
7 gional reliability entity for purposes of this para-
8 graph.

9 “(5) Until 6 months after approval of applica-
10 ble subsection (h)(3) procedures, any reliability
11 standard, guidance, or practice contained in Com-
12 mission-accepted tariffs, rate schedules, or agree-
13 ments in effect of any Commission-authorized inde-
14 pendent system operator or regional transmission or-
15 ganization shall continue to apply unless the Com-
16 mission accepts an amendment thereto by the appli-
17 cable operator or organization, or upon complaint
18 finds them to be unjust, unreasonable, unduly dis-
19 criminatory or preferential, or not in the public in-
20 terest. At the conclusion of such transition period,
21 any such reliability standard, guidance, practice, or
22 amendment thereto that the Commission determines
23 is inconsistent with organization standards shall no
24 longer apply.”.

1 (2) ENFORCEMENT.—Sections 316 and 316A of
2 the Federal Power Act are each amended by striking
3 “or 214” each place it appears and inserting “214,
4 or 215”.

5 (b) APPLICATION OF ANTITRUST LAWS.—Notwith-
6 standing any other provision of law, each of the following
7 activities are rebuttably presumed to be in compliance with
8 the antitrust laws of the United States:

9 (1) Activities undertaken by the Electric Reli-
10 ability Organization under section 215 of the Fed-
11 eral Power Act or affiliated regional reliability entity
12 operating under an agreement in effect under sec-
13 tion 215(h) of such Act.

14 (2) Activities of a member of the Electric Reli-
15 ability Organization or affiliated regional reliability
16 entity in pursuit of organization objectives under
17 section 215 of the Federal Power Act undertaken in
18 good faith under the rules of the organization.

19 Primary jurisdiction, and immunities and other affirma-
20 tive defenses, shall be available to the extent otherwise ap-
21 plicable.

1 **Subtitle B—Purpa Mandatory**
2 **Purchase and Sale Requirements**

3 **SEC. 803. PURPA MANDATORY PURCHASE AND SALE RE-**
4 **QUIREMENTS.**

5 Section 210 of the Public Utility Regulatory Policies
6 Act of 1978 is amended by adding the following:

7 “(m) TERMINATION OF MANDATORY PURCHASE AND
8 SALE REQUIREMENTS.—

9 “(1) IN GENERAL.—After the date of enact-
10 ment of this subsection, no electric utility shall be
11 required to enter into a new contract or obligation
12 to purchase electric energy from, or sell electric en-
13 ergy under this section.

14 “(2) NO EFFECT ON EXISTING RIGHTS AND
15 REMEDIES.—Nothing in this subsection affects the
16 rights or remedies of any party with respect to the
17 purchase or sale of electric energy or capacity from
18 or to a facility under this section under any contract
19 or obligation to purchase or to sell electric energy or
20 capacity on the date of enactment of this subsection,
21 including—

22 “(A) the right to recover costs of pur-
23 chasing such electric energy or capacity; and

24 “(B) in States without competition for re-
25 tail electric supply, the obligation of a utility to

1 provide, at just and reasonable rates for con-
2 sumption by a qualifying small power produc-
3 tion facility or a qualifying cogeneration facility,
4 backup, standby, and maintenance power.

5 “(3) RECOVERY OF COSTS.—

6 “(A) REGULATION.—To ensure recovery,
7 by an electric utility that purchases electricity
8 or capacity from a qualifying facility pursuant
9 to any legally enforceable obligation entered
10 into or imposed under this section before the
11 date of enactment of this subsection, of all costs
12 associated with the purchases, the Commission
13 shall issue and enforce such regulations as are
14 required to ensure that no electric utility shall
15 be required directly or indirectly to absorb the
16 costs associated with such purchases.

17 “(B) ENFORCEMENT.—A regulation under
18 subparagraph (A) shall be enforceable in ac-
19 cordance with the provisions of law applicable
20 to enforcement of regulations under the Federal
21 Power Act.”.

1 **Subtitle C—Repeal of the Public**
2 **Utility Holding Company Act of**
3 **1935 and Enactment of the Pub-**
4 **lic Utility Holding Company Act**
5 **of 2001**

6 **SEC. 810. SHORT TITLE.**

7 This Subtitle may be cited as the “Public Utility
8 Holding Company Act of 2001”.

9 **SEC. 811. FINDINGS AND PURPOSES.**

10 (a) FINDINGS.—The Congress finds that—

11 (1) the Public Utility Holding Company Act of
12 1935 was intended to facilitate the work of Federal
13 and State regulators by placing certain constraints
14 on the activities of holding company systems;

15 (2) developments since 1935, including changes
16 in other regulation and in the electric and gas indus-
17 tries, have called into question the continued rel-
18 evance of the model of regulation established by that
19 Act;

20 (3) there is a continuing need for State regula-
21 tion in order to ensure the rate protection of utility
22 customers; and

23 (4) limited Federal regulation is necessary to
24 supplement the work of State commissions for the

1 continued rate protection of electric and gas utility
2 customers.

3 (b) PURPOSES.—The purposes of this Title are—

4 (1) to eliminate unnecessary regulation, yet
5 continue to provide for consumer protection by facili-
6 tating existing rate regulatory authority through im-
7 proved Federal and State commission access to
8 books and records of all companies in a holding com-
9 pany system, to the extent that such information is
10 relevant to rates paid by utility customers, while af-
11 fording companies the flexibility required to compete
12 in the energy markets; and

13 (2) to address protection of electric and gas
14 utility customers by providing for Federal and State
15 access to books and records of all companies in a
16 holding company system that are relevant to utility
17 rates.

18 **SEC. 812. DEFINITIONS.**

19 For the purposes of this Subtitle—

20 (1) the term “affiliate” of a company means
21 any company 5 percent or more of the outstanding
22 voting securities of which are owned, controlled, or
23 held with power to vote, directly or indirectly, by
24 such company;

1 (2) the term “associate company” of a company
2 means any company in the same holding company
3 system with such company;

4 (3) the term “Commission” means the Federal
5 Energy Regulatory Commission;

6 (4) the term “company” means a corporation,
7 partnership, association, joint stock company, busi-
8 ness trust, or any organized group of persons,
9 whether incorporated or not, or a receiver, trustee,
10 or other liquidating agent of any of the foregoing;

11 (5) the term “electric utility company” means
12 any company that owns or operates facilities used
13 for the generation, transmission, or distribution of
14 electric energy for sale;

15 (6) the terms “exempt wholesale generator”
16 and “foreign utility company” have the same mean-
17 ings as in sections 32 and 33, respectively, of the
18 Public Utility Holding Company Act of 1935, as
19 those sections existed on the day before the effective
20 date of this Act;

21 (7) the term “gas utility company” means any
22 company that owns or operates facilities used for
23 distribution at retail (other than the distribution
24 only in enclosed portable containers or distribution
25 to tenants or employees of the company operating

1 such facilities for their own use and not for resale)
2 of natural or manufactured gas for heat, light, or
3 power;

4 (8) the term “holding company” means—

5 (A) any company that directly or indirectly
6 owns, controls, or holds with power to vote, 10
7 percent or more of the outstanding voting secu-
8 rities of a public utility company or of a holding
9 company of any public utility company; and

10 (B) any person, determined by the Com-
11 mission, after notice and opportunity for hear-
12 ing, to exercise directly or indirectly (either
13 alone or pursuant to an arrangement or under-
14 standing with one or more persons) such a con-
15 trolling influence over the management or poli-
16 cies of any public utility company or holding
17 company as to make it necessary or appropriate
18 for the rate protection of utility customers with
19 respect to rates that such person be subject to
20 the obligations, duties, and liabilities imposed
21 by this Title upon holding companies;

22 (9) the term “holding company system” means
23 a holding company, together with its subsidiary com-
24 panies;

1 (10) the term “jurisdictional rates” means
2 rates established by the Commission for the trans-
3 mission of electric energy in interstate commerce,
4 the sale of electric energy at wholesale in interstate
5 commerce, the transportation of natural gas in inter-
6 state commerce, and the sale in interstate commerce
7 of natural gas for resale for ultimate public con-
8 sumption for domestic, commercial, industrial, or
9 any other use;

10 (11) the term “natural gas company” means a
11 person engaged in the transportation of natural gas
12 in interstate commerce or the sale of such gas in
13 interstate commerce for resale;

14 (12) the term “person” means an individual or
15 company;

16 (13) the term “public utility” means any person
17 who owns or operates facilities used for transmission
18 of electric energy in interstate commerce or sales of
19 electric energy at wholesale in interstate commerce;

20 (14) the term “public utility company” means
21 an electric utility company or a gas utility company;

22 (15) the term “State commission” means any
23 commission, board, agency, or officer, by whatever
24 name designated, of a State, municipality, or other
25 political subdivision of a State that, under the laws

1 of such State, has jurisdiction to regulate public util-
2 ity companies;

3 (16) the term “subsidiary company” of a hold-
4 ing company means—

5 (A) any company, 10 percent or more of
6 the outstanding voting securities of which are
7 directly or indirectly owned, controlled, or held
8 with power to vote, by such holding company;
9 and

10 (B) any person, the management or poli-
11 cies of which the Commission, after notice and
12 opportunity for hearing, determines to be sub-
13 ject to a controlling influence, directly or indi-
14 rectly, by such holding company (either alone or
15 pursuant to an arrangement or understanding
16 with one or more other persons) so as to make
17 it necessary for the rate protection of utility
18 customers with respect to rates that such per-
19 son be subject to the obligations, duties, and li-
20 abilities imposed by this Title upon subsidiary
21 companies of holding companies; and

22 (17) the term “voting security” means any se-
23 curity presently entitling the owner or holder thereof
24 to vote in the direction or management of the affairs
25 of a company.

1 **SEC. 813. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
2 **PANY ACT OF 1935.**

3 The Public Utility Holding Company Act of 1935 (15
4 U.S.C. 79a et seq.) is repealed, effective one year after
5 the date of enactment of this Subtitle.

6 **SEC. 814. FEDERAL ACCESS TO BOOKS AND RECORDS.**

7 (a) IN GENERAL.—Each holding company and each
8 associate company thereof shall maintain, and shall make
9 available to the Commission, such books, accounts, memo-
10 randa, and other records as the Commission deems to be
11 relevant to costs incurred by a public utility or natural
12 gas company that is an associate company of such holding
13 company and necessary or appropriate for the protection
14 of utility customers with respect to jurisdictional rates for
15 the transmission of electric energy in interstate commerce,
16 the sale of electric energy at wholesale in interstate com-
17 merce, the transportation of natural gas in interstate com-
18 merce, and the sale in interstate commerce of natural gas
19 for resale for ultimate public consumption for domestic,
20 commercial, industrial, or any other use.

21 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
22 ing company or of any subsidiary company of a holding
23 company shall maintain, and make available to the Com-
24 mission, such books, accounts, memoranda, and other
25 records with respect to any transaction with another affil-
26 iate, as the Commission deems to be relevant to costs in-

1 curred by a public utility or natural gas company that is
 2 an associate company of such holding company and nec-
 3 essary or appropriate for the protection of utility cus-
 4 tomers with respect to jurisdictional rates.

5 (c) HOLDING COMPANY SYSTEMS.—The Commission
 6 may examine the books, accounts, memoranda, and other
 7 records of any company in a holding company system, or
 8 any affiliate thereof, as the Commission deems to be rel-
 9 evant to costs incurred by a public utility or natural gas
 10 company within such holding company system and nec-
 11 essary or appropriate for the protection of utility cus-
 12 tomers with respect to jurisdictional rates.

13 (d) CONFIDENTIALITY.—No member, officer, or em-
 14 ployee of the Commission shall divulge any fact or infor-
 15 mation that may come to his or her knowledge during the
 16 course of examination of books, accounts, memoranda, or
 17 other records as provided in this section, except as may
 18 be directed by the Commission or by a court of competent
 19 jurisdiction.

20 **SEC. 815. STATE ACCESS TO BOOKS AND RECORDS.**

21 (a) IN GENERAL.—Upon the written request of a
 22 State commission having jurisdiction to regulate a public
 23 utility company in a holding company system, the holding
 24 company or any associate company or affiliate thereof,
 25 other than such public utility company, wherever located,

1 shall produce for inspection books, accounts, memoranda,
2 and other records that—

3 (1) have been identified in reasonable detail in
4 a proceeding before the State commission;

5 (2) the State commission deems are relevant to
6 costs incurred by such public utility company; and

7 (3) are necessary for the effective discharge of
8 the responsibilities of the State commission with re-
9 spect to such proceeding.

10 (b) LIMITATION.—Subsection (a) does not apply to
11 any person that is a holding company solely by reason of
12 ownership of one or more qualifying facilities under the
13 Public Utility Regulatory Policies Act.

14 (c) CONFIDENTIALITY OF INFORMATION.—The pro-
15 duction of books, accounts, memoranda, and other records
16 under subsection (a) shall be subject to such terms and
17 conditions as may be necessary and appropriate to safe-
18 guard against unwarranted disclosure to the public of any
19 trade secrets or sensitive commercial information.

20 (d) EFFECT ON STATE LAW.—Nothing in this sec-
21 tion shall preempt applicable State law concerning the pro-
22 vision of books, records, or any other information, or in
23 any way limit the rights of any State to obtain books,
24 records, or any other information under any other Federal
25 law, contract, or otherwise.

1 (e) COURT JURISDICTION.—Any United States dis-
2 trict court located in the State in which the State commis-
3 sion referred to in subsection (a) is located shall have ju-
4 risdiction to enforce compliance with this section.

5 **SEC. 816. EXEMPTION AUTHORITY.**

6 (a) RULEMAKING.—Not later than 90 days after the
7 effective date of this Subtitle, the Commission shall pro-
8 mulgate a final rule to exempt from the requirements of
9 section 815 any person that is a holding company, solely
10 with respect to one or more—

11 (1) qualifying facilities under the Public Utility
12 Regulatory Policies Act of 1978;

13 (2) exempt wholesale generators; or

14 (3) foreign utility companies.

15 (b) OTHER AUTHORITY.—If, upon application or
16 upon its own motion, the Commission finds that the books,
17 records, accounts, memoranda, and other records of any
18 person are not relevant to the jurisdictional rates of a pub-
19 lic utility or natural gas company, or if the Commission
20 finds that any class of transactions is not relevant to the
21 jurisdictional rates of a public utility or natural gas com-
22 pany, the Commission shall exempt such person or trans-
23 action from the requirements of section 815.

1 **SEC. 817. AFFILIATE TRANSACTIONS.**

2 Nothing in this Subtitle shall preclude the Commis-
3 sion or a State commission from exercising its jurisdiction
4 under otherwise applicable law to determine whether a
5 public utility company, public utility, or natural gas com-
6 pany may recover in rates any costs of an activity per-
7 formed by an associate company, or any costs of goods
8 or services acquired by such public utility company from
9 an associate company.

10 **SEC. 818. APPLICABILITY.**

11 No provision of this Subtitle shall apply to, or be
12 deemed to include—

13 (1) the United States;

14 (2) a State or any political subdivision of a
15 State;

16 (3) any foreign governmental authority not op-
17 erating in the United States;

18 (4) any agency, authority, or instrumentality of
19 any entity referred to in paragraph (1), (2), or (3);
20 or

21 (5) any officer, agent or employee of any entity
22 referred to in paragraph (1), (2), or (3) acting as
23 such in the course of his or her official duty.

1 **SEC. 819. EFFECT ON OTHER REGULATIONS.**

2 Nothing in this Subtitle precludes the Commission or
3 a State commission from exercising its jurisdiction under
4 otherwise applicable law to protect utility customers.

5 **SEC. 820. ENFORCEMENT.**

6 The Commission shall have the same powers as set
7 forth in sections 306 through 317 of the Federal Power
8 Act (16 U.S.C. 825d–825p) to enforce the provisions of
9 this Subtitle.

10 **SEC. 821. SAVINGS PROVISIONS.**

11 (a) IN GENERAL.—Nothing in this Subtitle prohibits
12 a person from engaging in or continuing to engage in ac-
13 tivities or transactions in which it is legally engaged or
14 authorized to engage on the effective date of this Subtitle.

15 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
16 Nothing in this Subtitle limits the authority of the Com-
17 mission under the Federal Power Act (16 U.S.C. 791a et
18 seq.) (including section 301 of that Act) or the Natural
19 Gas Act (15 U.S.C. 717 et seq.) (including section 8 of
20 that Act).

21 **SEC. 822. IMPLEMENTATION.**

22 Not later than 6 months after the date of enactment
23 of this Subtitle, the Commission shall—

24 (1) promulgate such regulations as may be nec-
25 essary or appropriate to implement this Title (other
26 than section 815); and

1 (2) submit to Congress detailed recommenda-
 2 tions on technical and conforming amendments to
 3 Federal law necessary to carry out this Subtitle and
 4 the amendments made by this Subtitle.

5 **SEC. 823. TRANSFER OF RESOURCES.**

6 All books and records that relate primarily to the
 7 functions transferred to the Commission under this Sub-
 8 title shall be transferred from the Securities and Exchange
 9 Commission to the Commission.

10 **SEC. 824. AUTHORIZATION OF APPROPRIATIONS.**

11 There are authorized to be appropriated such funds
 12 as may be necessary to carry out this Subtitle.

13 **SEC. 825. CONFORMING AMENDMENT TO THE FEDERAL**
 14 **POWER ACT.**

15 Section 318 of the Federal Power Act (16 U.S.C.
 16 825q) is repealed.

17 **Subtitle D—Emission-Free Control**
 18 **Measures Under State Imple-**
 19 **mentation Plans**

20 **SEC. 830. EMISSION-FREE CONTROL MEASURES UNDER A**
 21 **STATE IMPLEMENTATION PLAN.**

22 Actions taken by a State to support the continued
 23 operation of existing emission-free electricity sources, or
 24 the construction or operation of new emission-free elec-
 25 tricity sources, shall be considered control measures nec-

1 essary or appropriate to meet applicable requirements
2 under section 110(a) of the Clean Air Act (42 U.S.C.
3 7410(a)) and shall be included in a State Implementation
4 Plan.

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